

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

**VIDEOTAPE DEPOSITION OF DR. SUSAN J. SIMONIAN**

DONALD A. LABELLE, as Personal Representative of  
the Estate of CHRISTINE LEZZO LABELLE, Deceased,

Plaintiffs,

vs. CASE NO. 2:98-3235-23

PHILIP MORRIS, INCORPORATED, (PHILIP MORRIS,  
U.S.A.) LIGGETT & MYERS, INC.; THE BROOKE GROUP  
LIMITED; and LIGGETT GROUP, INC.,

**Defendants.**

COPY

15 THE VIDEOTAPE DEPOSITION OF DR. SUSAN J.  
16 SIMONIAN, taken on behalf of the Plaintiff, on  
17 July 19, 2000, commencing at 9:00 a.m., at the  
18 offices of Ness, Motley, Loadholt, Richardson &  
19 Poole, 28 Bridgeside Boulevard, Mount Pleasant,  
20 South Carolina.

22 REPORTED BY: ROBERT P. LLOYD  
23 Registered Merit Reporter  
CLARK & LLOYD REPORTING SERVICES  
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4                   A P P E A R A N C E S

5                   FOR THE PLAINTIFFS:

6                   NESS, MOTLEY, LOADHOLT,  
7                   RICHARDSON & POOLE  
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21  
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24  
25

22                  ALSO PRESENT:           CHARLES EDMONDS, VIDEOGRAPHER

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1 DR. SUSAN J. SIMONIAN, having been  
2 first duly sworn, testified as hereinafter set  
3 forth.

4 EXAMINATION

5 BY MR. KLOK:

6 Q. Good morning, Dr. Simonian. How are you  
7 doing?

8 A. Good morning.

9 Q. My name is Rhett Klok. I'm an attorney  
10 representing the Labelles in this case against  
11 Philip Morris, et al.

12 Could you please state your name and  
13 address for the record, please?

14 A. Dr. Susan Simonian. My office address  
15 is 857-C Coleman Boulevard, Mount Pleasant, South  
16 Carolina, 29464.

17 MR. KLOK: I'd like to introduce Exhibit  
18 Number 1 into the record.

19 (Exhibit No. 1 was marked for  
20 identification.)

21 Q. Have you seen this before?

22 A. Yes, I have.

23 Q. Could you identify for the record what I  
24 gave you just now?

25 A. A Notice of Videotape Deposition.

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1 Q. Okay. Do you remember if there were --  
2 if you look at the second page, there's a Schedule  
3 A. Do you see that?

4 A. Yes.

5 Q. There are a number of items requested  
6 that be brought in preparation for this  
7 deposition. Do you remember gathering any of  
8 those documents and items?

9 A. Yes.

10 Q. Are there any other documents or items  
11 in Schedule A that you think are responsive that  
12 you haven't turned over yet?

13 A. Yes.

14 O. What are those items?

15 A. There are documents -- there are a few  
16 documents, phone -- record of two phone contacts  
17 and some notes that have occurred since this time.

18 Q. And when you say phone contacts, do you  
19 keep a log of your phones?

20 A. Yes, I do.

21 Q. Okay. And could you provide that to  
22 your lawyers?

23 MS. SCHWARZSCHILD: Let me just say that  
24 that would be contingent upon -- we can deal with  
25 it afterwards or at a break. Dr. Simonian

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1 produced everything responsive to the subpoena up  
2 through the time that it was requested. In the  
3 last couple days, she has noted two other phone  
4 calls and taken some notes of depositions she  
5 read, and what we would have to have an agreement  
6 on, and I don't think we have, is that all of your  
7 witnesses have produced everything subsequent to  
8 the time of production when we took their  
9 depositions. And so I'd be happy to do it so long  
10 as we're doing it across the board.

11 MR. KLOK: And actually, if we're able  
12 to cover the information in the deposition, I  
13 think that should be sufficient. So why don't we  
14 just move forward on that.

15 MS. SCHWARZSCHILD: Okay.

16 Q. Other than those two phone conversations  
17 and a few depositions that you might have  
18 reviewed, is there anything else that you know of?

19 A. No.

20 Q. Okay. What depositions have you  
21 reviewed since that you haven't given me in the  
22 disclosure according to Schedule A?

23 A. The deposition of Dr. Craver.

24 Q. When did you receive that?

25 A. Saturday.

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1 Q. And you mentioned that there's been two  
2 phone conversations. Do you remember the nature  
3 of those phone conversations?

4 A. Yes.

5 Q. What were they?

6 A. I spoke with Mr. Burton once. He told  
7 me that he was going to send the videotape  
8 deposition, and once to just confirm the time of  
9 the deposition.

10 Q. And Dr. Simonian, have you ever been  
11 deposed before?

12 A. Yes.

13 Q. And in what setting have you been  
14 deposed before?

15 A. Could you clarify, please?

16 Q. Yes. What kind of context was it? Were  
17 you a witness? Were you an expert? Were you a  
18 plaintiff?

19 A. An expert witness.

20 Q. How many times have you testified as an  
21 expert witness before?

22 A. Less than six.

23 Q. Do you recall all six times?

24 A. Yes, to some degree.

25 Q. And what capacity, to the best of your

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1 ability, did you testify starting with the first  
2 time?

3 A. As a licensed clinical psychologist.

4 Q. And what were you doing in that capacity  
5 as a licensed clinical psychologist? Were you  
6 evaluating any person or patient?

7 A. Could you clarify?

8 Q. Were you -- what was the capacity in  
9 which you were testifying as a licensed  
10 psychologist?

11 A. Through treatment and evaluation of  
12 clients.

13 Q. Were you asked to testify in the  
14 capacity of your treatment of a client, a client  
15 that you were treating?

16 A. Yes.

17 Q. How about the second time?

18 A. The same. All of them are the same.

19 Q. Okay. Have you ever been a plaintiff in  
20 a lawsuit?

21 A. No, I have not.

22 Q. Have you ever been involved in  
23 litigation as a defendant?

24 A. No, I have not.

25 Q. Have you ever been involved in

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1 litigation as a witness?

2 A. Other than an expert witness?

3 Q. Correct.

4 A. No, I have not.

5 Q. Have you ever testified in tobacco  
6 litigation before?

7 A. No.

8 Q. Are you currently receiving or applying  
9 for a grant for money from the tobacco industry or  
10 any other trade organizations?

11 A. No.

12 Q. Has the tobacco companies or trade  
13 organization for the tobacco companies or their  
14 lawyers donated any money to a charity of yours?

15 A. No.

16 Q. Okay. I'm going to hand over to you a  
17 document which was turned over to us on March 1,  
18 2000 by your lawyers. Do you recognize that?

19 A. Yes.

20 Q. You know what, why don't I -- why don't  
21 we trade. Why don't you give me that one back.  
22 I'll give this to everyone over here. Can we mark  
23 this as Exhibit Number 2, please?

24 A. As a correction.

25 Q. Yeah.

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1 A. They are not my attorneys.

2 Q. Right.

3 (Exhibit No. 2 was marked for  
4 identification.)

5 Q. Dr. Simonian, I hand you a document.

6 It's entitled Susan J. Simonian, Ph.D. I will  
7 represent to you that this is your expert  
8 statement of opinion and disclosure in accordance  
9 with the rules of this case. If you look to  
10 appendix A entitled curriculum vitae. Is that  
11 your CV?

12 A. Yes.

13 Q. Okay. And this is an order -- just to  
14 kind of save some time -- does this CV, is it an  
15 accurate reflection today of all your professional  
16 accomplishments or is there any information on  
17 this that may be missing?

18           A.     There are additional since the time I've  
19 turned it over.

20 Q. Okay. Has there been any changes in any  
21 of your positions since the time you --

22 A. Yes.

23 Q. Are you still currently working as a  
24 faculty member at the College of Charleston,  
25 Department of Psychology?

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1       A. Yes.

2       Q. What changes have there been?

3       A. An additional publication, an additional  
4 national presentation, an additional appointment.

5       Q. Let's start with the presentation. What  
6 additional presentation have you done?

7       A. I had a presentation accepted at the  
8 annual convention of the American Psychological  
9 Association.

10      Q. And what additional publication?

11      A. I had a manuscript accepted for  
12 publication.

13      Q. And what was the title of that  
14 publication?

15      A. I'll have to look to give you the  
16 accurate title. Recognition of Facial Affect in  
17 Children with Social Phobia.

18      Q. Okay. And what page are you looking to?

19      A. I'm looking at page 12.

20      Q. So basically, it's -- it is a submitted  
21 document that now has been accepted for  
22 publication?

23      A. Yes.

24      Q. Okay. What was the title of your  
25 presentation?

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1 A. My presentation is Screening for  
2 Behavioral Disturbance in Pediatric Primary Care  
3 Settings.

4 Q. And there was a third item, and I forgot  
5 what it was that you said.

6           A. An appointment. I don't have formal  
7 notice of that, but the committee chair advised me  
8 that I was on -- appointed to a committee for the  
9 South Carolina Psychological Association.

10 Q. Okay, great. Are there any other  
11 changes or maybe mistakes or anything else on this  
12 CV as you sit here today that you would like to  
13 correct or add?

14 A. I don't believe so.

15 Q. Okay. I noticed in your CV it says that  
16 you're licensed in South Carolina, Ohio, and  
17 California.

18 A. Yes.

19 Q. Let's start with South Carolina first.  
20 Are there -- what are the licensing requirements  
21 for psychologists in the State of South Carolina?  
22 Are there different types of licenses?

23 A. Yes.

24 Q. What are they?

25 A. In psychology or in all allied health?

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1 Q. In psychology.

2 A. In psychology, the licensure is -- is  
3 domain specific. And so you're license is in,  
4 say, clinical, as mine is. It can be in other  
5 areas of psychology as well.

6 Q. Okay. And are there different exams for  
7 the various areas of licensure?

8 A. What type of exams?

9 Q. For psychologists. Are there different  
10 requirements for exams that one must take for each  
11 one of them?

12 A. I can -- I can't speak with 100 percent  
13 accuracy regarding the other domains. The written  
14 exam in my -- is the same. It's a national  
15 written exam. The oral examination would be  
16 conducted by different examiners within that  
17 subdiscipline.

18 Q. I noticed in your CV that you are  
19 currently a faculty member at the College of  
20 Charleston --

21 A. Yeah.

22 Q. -- Department of Psychology. You also  
23 have an independent practice.

24 A. Yes.

25 Q. And also evidenced in, I guess, as you

1 talked about it just recently, you are currently  
2 still publishing and actively engaging in lectures  
3 nationally; is that correct?

4 A. Yes.

5 Q. What percentage of your time would you  
6 say you dedicate to teaching?

7 A. It varies.

8 Q. Generally, if you can.

9 A. During the academic year, likely --  
10 teaching or other responsibilities as well as  
11 teaching?

12 Q. Teaching for now.

13 A. In the classroom, I teach three classes  
14 per semester.

15 Q. Okay. And how much -- what percentage  
16 of the time would you say you spend if you're  
17 taking the year as a whole teaching?

18 A. In the classroom, it would be three  
19 hours per week, three classes per semester two  
20 semesters.

21 Q. Okay. What percentage of your time do  
22 you spend in your private practice with patients?

23 A. That varies as well.

24 Q. Well, let's start with generally during  
25 the year what percentage of time?

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1           A. Overall, I would say 30 to 40 percent of  
2 my time.

3 Q. Okay. And I suppose during the academic  
4 year it's less vigorous and picks up during the  
5 summer or is that a wrong supposition?

6 A. Depending on my other demands.

7           Q.     How much time -- do you do -- well, let  
8 me strike that.

9 Do you do any research?

10 A. Yes.

11 Q. How much time do you spend on research?

12 A. That varies as well.

13 Q. I knew you were going to say that.

14 Generally, if you were to take the year, what  
15 would you say would be a fair estimate?

16           A. Overall, it can be 40 percent. Just  
17 depends; sometimes more; sometimes less.

18 Q. Okay. And I know -- and I don't know to  
19 what extent this crosses over, but you also  
20 obviously publish and lecture.

21 A. Yes.

22 Q. And that might have some overlap with  
23 research.

24 A. Yes.

25 O. But to the extent it doesn't, how much

1 time -- how much percentage of your time do you do  
2 that over the course of the year?

3 A. Outside of presenting my research, maybe  
4 5 to 10 percent.

5 Q. Okay. What particular area are you  
6 researching right now?

7 A. Many different areas.

8 Q. Is there any particular research project  
9 that you are focusing on at this particular time?

10 A. There are two that I'm in the middle of  
11 completing at the present time. One is screening  
12 for behavioral psychopathology in children and  
13 another area is looking at neurodevelopmental  
14 outcome of children whose mothers exercise during  
15 pregnancy.

16 Q. Are you currently married? I think  
17 you're CV says you have two children. You're  
18 married?

19 A. Yes.

20 Q. Do you smoke?

21 A. No.

22 Q. Does your husband smoke?

23 A. No.

24 Q. Do any of your children smoke?

25 A. No.

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1 Q. How old are your children?

2 A. Five and seven.

3 Q. Okay. Well, I would hope not.

4 A. Let's hope not.

5 Q. Do you allow people to smoke in your  
6 house?

7 A. No.

8 Q. Do you think smoking causes lung cancer?

9 MS. SCHWARZSCHILD: Object. She's not  
10 qualified to answer that question.

11 Q. What's your opinion about smoking and  
12 lung cancer? Do you have one?

13 A. My opinion is it doesn't fit into a  
14 behavioral health plan that's conducive with my  
15 life-style.

16 (Interruption.)

17 A. Excuse me.

18 Q. That's okay. So do you think there is a  
19 -- do you think smoking causes lung cancer?

20 MS. SCHWARZSCHILD: Object again. She's  
21 an expert witness, and she has no qualification,  
22 and she's not being offered on that issue. She's  
23 here to talk about psychological issues involving  
24 Donald Labelle, Junior.

25 Q. You can still answer the question.

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1       A. I would need to review all of the  
2 research. My own opinion is that it does not meet  
3 my behavioral healthcare needs.

4       Q. Have you ever lost a close relative to  
5 smoking-related disease?

6       A. I -- could you specify, please?

7       Q. Yeah. Have you ever lost a relative to  
8 a smoking-related disease?

9                   MS. SCHWARZSCHILD: Object. Again, no  
10 foundation.

11       Q. Close relative meaning your  
12 grandparents, your parents.

13       A. I'm unclear as --

14                   MS. SCHWARZSCHILD: Again, objection on  
15 lack of foundation.

16       A. I'm unclear as to the etiology of their  
17 different diseases. I certainly have lost folks  
18 in my family.

19       Q. Have you lost anyone -- we can go  
20 through some of the diseases. Have you lost any  
21 relatives to lung cancer?

22       A. Yes.

23       Q. Who?

24       A. A maternal uncle.

25       Q. Did your maternal uncle smoke?

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1 A. Not during the time I knew him. I don't  
2 know. I don't know.

3 Q. Anyone else? Any other close relatives  
4 lost to lung cancer?

5 A. No.

6 Q. Okay. How long ago was that?

7 A. 1987, I believe.

8 Q. Have you treated in your clinical  
9 practice patients who have lost relatives to  
10 smoking-related illness?

11 MS. SCHWARZSCHILD: Again, objection.

12 Lack of foundation.

13 A. Not that I can definitively identify  
14 etiology.

15 Q. Okay. Again, lung cancer as an example,  
16 have you ever treated a patient who has lost a  
17 close relative to lung cancer?

18 A. I'm sure I have. I can't recall a  
19 specific case. Not recently.

20 Q. Okay. And did that patient relate that  
21 loss? Or in those instances, have you ever had a  
22 patient who's related that loss to smoking cancer?

23 A. No.

24 Q. In your clinical practice, have you ever  
25 treated anyone who is attempting to quit smoking?

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1 A. Yes.

2 Q. Do you -- for that very specific  
3 purpose, have they come for your professional help  
4 in trying to quit smoking?

5           A. They usually come for a number of  
6 issues. That may be one of them.

7 Q. Okay. How do you treat people who are  
8 trying to quit smoking, as a psychologist?

9           A. With the empirically based treatment  
10 protocols.

11 O. And what is that?

#### A. Typically, behavioral techniques.

Q. And what kind of behavioral techniques?

14 A. Might be, again, assessing  
15 self-monitoring smoking behavior. Assessing  
16 antecedents and outcomes, trying to change those  
17 antecedents and outcomes. Changing conditioning,  
18 in other words, cues that trigger smoking.

19 Developing more adaptive stress-related behaviors  
20 if they're smoking in response to stress.

21 Developing other -- eating cessation techniques if  
22 they are using smoking to trigger the end of a  
23 meal. It depends on the client.

24 Q. Let's go back to the exhibit here. This  
25 is the disclosure. What Exhibit Number is that?

1 Exhibit 2.

2 MS. SCHWARZSCHILD: Two.

3 Q. Could you turn to appendix B(1), please.

4 Do you recognize that?

5 A. Yes.

6 Q. I think the first -- the page before  
7 that, it says appendix B(1), statement of  
8 opinions. Do you see that?

9 A. Yes.

10 Q. Okay. Do you remember what date you  
11 wrote this?

12 A. No.

13 Q. Or you worked on this?

14 A. (Witness shakes head.)

15 Q. Did you write this?

16 A. No.

17 Q. Who wrote it?

18 A. I'm not clear specifically on who wrote  
19 it.

20 Q. Okay. Did you have any input on it, on  
21 this statement here?

22 A. Yes.

23 Q. Okay. How did you have -- how did you  
24 work on having input on this?

25 A. I was asked to review it and make any

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1 corrections.

2 Q. Does it fairly and accurately reflect  
3 your opinion, at least the opinion you have in  
4 this case at the time it was presented?

5 A. Yes.

6 Q. Is there anything in this opinion as you  
7 sit -- as you sit here today that you would like  
8 to change?

9 A. No.

10 MR. KLOK: Can we go off the record.

11 (Off-the-record discussion.)

12 Q. Dr. Simonian, we were looking at this  
13 statement of opinion. Is there -- as a result of  
14 your subsequent report, is there anything in this  
15 opinion that you want to clarify, change or amend?

16 A. No.

17 Q. So this opinion, is it still a fair  
18 assessment of your opinion as you sit here today?

19 MS. SCHWARZSCHILD: Object. Asked and  
20 answered. Go ahead.

21 Q. Go ahead.

22 A. Yes.

23 Q. Well, let's look at the second  
24 paragraph. It says, if we can turn to the second  
25 sentence of that second paragraph, could you read

1 that to me, please?

2 A. She's expected to testify that contrary  
3 to the assertions in the January 27th, 2000,  
4 report of plaintiff's expert, Dr. Jeffrey R.  
5 Craver, Donny does not suffer from adjustment  
6 disorder with depressed mood because he does not  
7 meet the criteria for that disorder.

8 Q. And when that sentence refers to she, I  
9 take it that means you?

10 A. I -- yes.

11 Q. Okay. What -- if you could define for  
12 me, what is adjustment disorder?

13 A. An adjustment disorder is a response to  
14 an identified psychosocial stressor that is beyond  
15 what is expected given the individual's previous  
16 level of functioning, expectations for whatever  
17 the developmental level may be, and it cannot be  
18 due to bereavement.

19 Q. Okay. And when it says adjustment  
20 disorder with depressed mood, is that a specific  
21 subcategory of adjustment disorder?

22 A. Yes.

23 Q. And what is that, if you could tell me?

24 A. The symptoms might include sadness,  
25 tearfulness, and symptomatology that is suggestive

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1 of depression.

2 Q. Okay. I notice the second part of the  
3 sentence says that it is your opinion, I suppose,  
4 that Donny didn't meet that criteria of adjustment  
5 disorder with depressed mood. What is -- what  
6 criteria didn't he meet according to -- in your  
7 opinion?

8 A. The specifications for adjustment  
9 disorder indicate that it cannot simply be an  
10 exacerbation of previous psychopathology or  
11 issues. That it cannot be due to bereavement,  
12 which is the loss of a loved one. And it has to  
13 exceed expectations for response to whatever that  
14 stressor would be.

15 Q. Where is that criteria defined or what  
16 definition are you using?

17 A. DSM-IV.

18 Q. Is there a -- I know it's DSM-IV, but  
19 what does that stand for?

20 A. Diagnostic and Statistical Manual for  
21 Mental Disorders, Fourth Edition.

22 Q. Okay. What would be the normal process  
23 of bereavement that any child of Donny's age would  
24 go through? Is there a particular sequence?

25 A. The sequence can vary. There are some

1 stages that have been identified in the  
2 literature.

3 Q. And what would -- what kinds of  
4 bereavement criteria does a child at Donny's age  
5 generally go through, a normal child?

6 A. There's usually initially some denial  
7 and shock at the loss, and then children can go  
8 through a phase where they try to identify or  
9 recapture the lost individual maybe through play,  
10 through imitation, those kinds of things. There's  
11 also a tendency to then go through a stage of  
12 despair and -- as the realization or the finality  
13 of the loss becomes a little bit more apparent.  
14 And then the final stage of bereavement would  
15 include a resolution and a reorganization.

16 Q. How long a process does that ordinarily  
17 take for a child who is at the 1st grade level?

18 A. It varies. It truly varies.

19 Q. And what's the variation generally? Is  
20 there -- is there a scale of variation of how long  
21 it should take and --

22 A. It depends on the presence or absence of  
23 a number of different variables.

24 Q. Okay. And could you define those  
25 variables?

1           A.     The occurrence of another loss. Any  
2 other stressor that might come up at that time.  
3 The response of the other surviving relatives.  
4 The stress level that may or may not be in the  
5 home. The coping mechanisms of the child. A  
6 number of different things.

7 Q. Is there any time period where one would  
8 start to be concerned that the bereavement process  
9 is maybe becoming a little pathological in  
10 nature? Is that something that is abnormal, the  
11 time period is too lengthy for a child of that  
12 age?

13           A. You would need to look at that within  
14 the context of the child's developmental  
15 functioning and whether they are meeting the  
16 demands of the different environments in which  
17 they are expected to perform.

18 Q. So would you expect, for example, in a  
19 child who has lost -- who is a 1st grade child who  
20 may be a shy child who has lost a loved one, their  
21 mother, if they haven't adjusted to the  
22 bereavement after four years, is that too long?

23           A. I can't say with that kind of generality  
24 because children are not static. Their cognitive  
25 developmental level changes over time, so their

1 understanding of loss and death will change over  
2 time.

3 Q. What kind of signs would a child who has  
4 lost a mother in 1st grade who is bereaving, what  
5 kind of symptoms or signs would be considered  
6 abnormal with how the child deals with that?

7 A. Any kind of severe depression that's  
8 noted especially cross-situationally, statements  
9 of wanting to die or hurt themselves. Many of the  
10 same symptoms that would be considered abnormal  
11 for a child under a number of different  
12 circumstances. A change in behavior, a  
13 significant change in behavioral patterns where  
14 they no longer function in the environments in  
15 which they are expected to function.

16 Q. Would shy children have a tendency to  
17 internalize a death like that more than an  
18 extroverted child?

19 A. They may. There are a number of  
20 different factors that need to be considered in  
21 that risk resiliency model.

22 Q. When you evaluated Donny Junior, would  
23 you characterize him as introverted or  
24 extroverted?

25 A. Neither.

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1 Q. Did you -- there is a lot of report, and  
2 I don't know if you agree with it, but of  
3 excessive shyness. Do you agree with that  
4 assessment of Donny Junior?

5 A. Overall or in my office?

6 Q. In your office.

7 A. He was not excessively shy in my office.

8 Q. Do you agree with that agreement -- with  
9 that assessment overall?

10 A. He has a history of shyness.

11 Q. Okay. In the last sentence of that  
12 paragraph, could you read that to me on -- it's  
13 the second paragraph of appendix B(1).

14 A. In addition, she will testify that the  
15 problems that Dr. Craver has identified for Donny,  
16 namely excessive shyness, withdrawn behaviors and  
17 difficulty in conversing with others, all existed  
18 prior to his mother's illness or death.

19 Q. Did you in your reviewing of -- well,  
20 let me go back.

21 What materials did you review prior to  
22 this opinion being written up? What information  
23 had you reviewed up to that time?

24 A. I am not completely sure.

25 Q. Okay. Had you evaluated Donny Junior at

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1 that point?

2 A. No, not independently.

3 Q. Had you reviewed any depositions to that  
4 point?

5 A. No.

6 Q. Had you reviewed Dr. Craver's  
7 evaluations?

8 A. Yes.

9 Q. There was a June evaluation I believe.  
10 Had you seen that one? It's a June '99.

11 A. The first evaluation? I believe so.

12 Q. And then there was, I think, a January  
13 2000 evaluation. Did you have a chance to  
14 evaluate -- to look at that one before?

15 A. You know, I'm unclear on the temporal  
16 parameters without looking back. I may have. I'm  
17 not too sure.

18 Q. Besides the evaluations, were there any  
19 other materials that you can recall having  
20 reviewed before making this opinion?

21 A. I am not clear on the material when --  
22 the dates when I received the bulk of the  
23 material.

24 Q. Did you -- based on the materials you  
25 reviewed, did you find any indication that Dr.

1 Craver had denied the existence of prior excessive  
2 shyness or difficulty in conversing prior to Donny  
3 Junior's illness?

4 A. No.

5 MS. SCHWARZSCHILD: Excuse me, you mean  
6 Mrs. Labelle's illness?

7 MR. KLOK: I'm sorry, yes.

8 Q. What did you know about Donny Junior's  
9 shyness? Was there anything in particular?

10 A. At what point?

11 Q. When you wrote this opinion.

12 A. That there were reports of a  
13 long-standing parental concern about shyness.

14 Q. Are there any concerns a clinical  
15 psychologist takes into account knowing that a  
16 patient is excessively shy or certainly knowing  
17 that a patient like Donny Junior who is a child in  
18 1st grade, excessively shy, had just lost a  
19 parent, are there any special concerns for -- or  
20 considerations that you take into account?

21 A. You would watch any child who has lost a  
22 parent close and look for any severe  
23 psychopathology, any statements of self-harm.

24 Q. Do excessively shy children, are there  
25 any particular things you look for in excessively

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1 shy children who have lost a parent?

2 A. Above what we would look for in any  
3 child that's lost a parent?

4 Q. Correct.

5 A. No.

6 Q. I'm going to hand you over what should  
7 be marked as Exhibit 3.

8 (Exhibit No. 3 was marked for  
9 identification.)

10 Q. Do you recognize the document I just  
11 handed you or the pages of documents I just handed  
12 you?

13 A. I do.

14 Q. What is it?

15 A. They are my telephone logs.

16 Q. And is that your handwriting?

17 A. Yes.

18 Q. Okay. Will this help you be -- will  
19 this help you recreate what materials you used in  
20 making your opinion for appendix B(1)?

21 A. I don't believe so.

22 Q. We can go back to the back because I  
23 think the back is where the first one is of  
24 10/22/99, the very back. I believe this is a  
25 telephone log that was dated 10/22/99; is that

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1 correct?

2 A. Yes.

3 Q. And on the phone were Myra Jones, Henry  
4 Smythe, Junior, and yourself. Is that --

5 A. No. Myra Jones.

6 Q. Correct. And does it say -- is it also  
7 Henry Smythe, Junior?

8 A. No. That's of that office.

9 Q. Okay, good. I'm glad you can help me  
10 interpret that.

11 It seems in the general content portion  
12 on the second line it talks about evaluation by  
13 plaintiff team psychiatrist and specifically flags  
14 the 6/8/99 evaluation.

15 A. Right.

16 Q. Okay. So would it be fair to say that  
17 that was certainly something that you used in  
18 formulating your opinion in appendix B(1)?

19 A. Yes.

20 Q. Okay. Was this the first time you had  
21 been contacted by the lawyers for the tobacco  
22 companies?

23 A. This is the first time I was contacted  
24 by Myra Jones of Henry Smythe, Junior's office.

25 Q. Okay. And did you bill for this time or

1 was this an initial consultation?

2 A. For the phone call or for the consult?

3 Q. For the phone call.

4 A. I'd have to look at my billing logs.

5 Q. Okay. If we can turn to -- there's a  
6 record of 2/17/2000. Are you there?

7 A. Yes.

8 Q. This was a telephone contact you had  
9 with Pat Schwarzschild; is that correct?

10 A. Yes.

11 Q. Could you interpret the notes on  
12 2/17/2000, what was discussed that day?

13 A. In general or would you like me to read  
14 through the notes?

15 Q. Please. Well, if you could read through  
16 the notes; and if it sparks any ideas, go ahead  
17 and tell me, but please, for now, just go through  
18 the notes.

19 A. That there was a question about a  
20 videotape deposition in a controlled setting.  
21 Issues about talking to the evaluator who did the  
22 evaluation. And that would be played at trial as  
23 if the child were on the stand. No presence of  
24 defendant's attorney. Then have an opportunity to  
25 ask him questions, but as I recall not directly.

1 And that my response to that was -- regarding the  
2 report, that it was a comprehensive report. That  
3 I had some issues with the lack of significance of  
4 T-scores on the child self-report measures given  
5 anxiety reported by father. Recommendations in  
6 report, not involved in legal proceedings, however  
7 plaintiff's attorney pursuing video deposition.

8 Question regarding the utility of asking the child  
9 information. The court indicates minimum  
10 relationship established with child, evaluation  
11 was six months ago, one session, not ongoing  
12 comfortable relationship, e.g. ongoing therapist,  
13 et cetera. Four, no data to suggest child would  
14 be more comfortable with these examiners versus  
15 other adults given questioning pursued with  
16 appropriate sensitivity. Already involved  
17 presence of video personnel, et cetera.

18 Q. At least as of February 17, 2000, you  
19 still only had that initial report, correct, to  
20 evaluate Donny?

21 A. I believe so.

22 Q. And is it fair to say that that -- that  
23 is bolstered by only one visit at the time? I  
24 think -- I'm looking for the place in the notes  
25 where it says that. Yeah, on the second page of

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1 that attachment to that phone note. Report  
2 indicates minimal relationship established with  
3 the child and one session. So I suppose at that  
4 point you were only aware of one session, correct?

5 A. I was only aware of one session at this  
6 time.

7 Q. If we can go back to the back of the  
8 phone log. Let's go to the next time you had  
9 contact, which was 10/29/99.

10 A. I'm reading 10/26/99.

11 Q. And then below that in the middle of the  
12 page there's a 10/29.

13 A. Yes.

14 Q. Were your -- who were your primary  
15 contacts as you sit there today -- as you sit here  
16 today? Is it Pat Schwarzschild, did you  
17 communicate with him frequently?

18 A. With her I communicated. If you can  
19 define frequently, I can better quantify for you.

20 Q. Well, when dealing with this matter  
21 specifically, which lawyers were you contacted by?

22 A. Pat Schwarzschild and Rick Burton.

23 Q. Were there any others?

24 A. That contacted me directly, initiate  
25 contact? No.

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1 Q. Or that you have regular conversations  
2 with.

3 A. NO.

4 Q. Okay. Let's go through the time that  
5 you spent doing this. I believe in these phone  
6 records you keep track of the time you spend; is  
7 that correct?

## 8            A.      Approximate.

9           Q.    Right, right. I'm not going to hold  
10 your feet to the fire.

11 So there was that initial contact on  
12 10/22/99; is that correct?

13 A. Yes.

14 Q. And then there was a subsequent on  
15 10/26/99. It was a message at least, is that  
16 correct?

17           A. Well, 10/26 preceded me returning the  
18 message on 10/29.

19 Q. And that was to set up a conference  
20 call, correct?

21           A. Yes, to confirm the date of a conference  
22 call.

23 Q. Did you know at that time what the  
24 conference call was about?

25 A. I knew I would be asked questions

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1 regarding this child's ability to sit through a  
2 deposition.

3 Q. Had you evaluated -- had you read by  
4 that time the evaluation of 6/8/99?

5 A. I don't know if I did at the time of the  
6 phone call. I did after -- some time after that,  
7 if not during that phone call. I don't know --  
8 I'd have to check my records to see when I  
9 received that.

10 Q. Okay. And the next conversation you had  
11 -- I don't see a record there of how long that  
12 took, but I suppose it was a message, and you just  
13 returned the message, is that correct, so it  
14 wasn't very long?

15 A. Yeah, right.

16 Q. Then the next contact I have is 11/17/99  
17 for approximately half an hour; is that correct?

18 A. Yes.

19 Q. As you read those notes, do you have any  
20 recollection of what was discussed during that  
21 conversation?

22 A. Issues regarding the child and about the  
23 evaluation by Dr. Craver.

24 Q. Okay. And then the following  
25 conversation you had was on February 7 of 2000,

1 and it says a ten minute conversation with Rick  
2 Burton; is that correct?

3 A. Approximately ten minutes, yes.

4 Q. And it seems like you were discussing  
5 how long -- when the trial might go and how long  
6 you might be working on this issue. I mean, it  
7 seems, but I don't know, if you can read those  
8 notes, tell me what you recollect that discussion  
9 was about.

10 A. That I had initially thought my  
11 consultation might have ended with the issues of  
12 the deposition. I was recontacted and asked  
13 whether I would consider doing an independent  
14 evaluation. I asked the time frames, since I have  
15 other demands, about when that might be.

16 Q. And then we go into the 2/17/2000  
17 messages which we already discussed. And that  
18 lasted about 20 minutes; is that correct?

19 A. Yes.

20 Q. And that was with Pat Schwarzschild?

21 A. Yes.

22 Q. The following message is 6/14/2000.

23 A. Yes.

24 Q. And it was with Rick Burton, and it  
25 seems like you're discussing this deposition.

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1       A. He gave me the specifics on the  
2 deposition.

3       Q. The following message is 6/29/2000,  
4 again, from Rick Burton; and I suppose it talked  
5 about the materials that you assembled including  
6 these notes for the deposition. Is that correct?

7       A. Yes.

8       Q. What's the -- that second sentence in  
9 that note, it says general info on how assess  
10 progressed, what was that about?

11      A. He asked me how the assessment went.

12      Q. And you gave him a quick -- do you  
13 remember what you told him?

14      A. I remember telling him that the child  
15 did talk to me, that I was able to successfully  
16 complete all the measures I planned, that the  
17 child did participate in the interview, that the  
18 father was there and that -- and that an attorney  
19 came with them but did not stay.

20      Q. Okay. And then the next contact we have  
21 is July 6th. There's a message on your voice  
22 mail. It's from Janice Mott, and she was one of  
23 Donny Junior's teachers. What teacher was she?

24      A. His 3rd grade -- second time through 3rd  
25 grade teacher.

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1 Q. Did you -- why did you contact her?

2 A. I had sent some forms home with Mr.  
3 Labelle. He had offered to take those and give  
4 them to the teacher, and I wanted her to complete  
5 the teacher evaluation rating forms.

6 Q. What kind of test was that for?

7 A. I'm sorry, I'm not --

8 Q. What kind of test or forms were you  
9 giving her? What kind of evaluation was it?

10 A. Standardized teacher report forms.

11 Q. And what were you -- what does the form  
12 look for? What kind of information is it seeking?

13 A. Information about a broad range of  
14 behavior and behavioral functioning and social  
15 competence.

16 Q. Does that test have other components?

17 Do other people have to do evaluations to complete  
18 it?

19 A. There were two. I'm not sure what  
20 you're asking me, I'm sorry.

21 Q. Do other parties have to complete  
22 similar evaluations or questionnaires to complete  
23 this assessment?

24 A. Not -- not these forms. These are --  
25 only the teacher fills these out.

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1 Q. Does it stand on its own as a separate  
2 -- is it a part of a battery of tests?

3           A. It can be used as part of a battery of  
4 tests.

5 Q. And were you using it as part of a test?

6           A.    I used it as one of the many tests that  
7 I -- measures I used in this assessment.

8 Q. Didn't you also give a questionnaire to  
9 Mr. Labelle that was similar to the one you gave  
10 to the teacher?

11           A. I gave a number of questionnaires to Mr.  
12 Labelle, yes.

13 Q. Okay. Let's look at the next message,  
14 which is I think 7/6/2000, and you spoke to Mr.  
15 Burton and a Chip Wright. I suppose he was an  
16 attorney also there or someone on the phone.

17 A. He was identified as a colleague.

18 Q. Did -- this lasted about an hour and 25  
19 minutes. It seems like a more complete debriefing  
20 of your evaluation. Could you just go through  
21 your notes and tell me what that conversation was  
22 about.

23           A.   Discussed overall impression of the  
24 psychological evaluation.   Discussed questions  
25 regarding Dr. Craver's initial evaluation and

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1 follow-up. Discussed issues regarding bereavement  
2 and developmental focus. Discussed DSM-IV  
3 diagnostic criteria. Discussed any outside  
4 sources used in preparation of my evaluation. The  
5 attorneys were sending transcripts and video of  
6 Donald Labelle, Senior's deposition. Informed me  
7 that in the grandfather's deposition, they  
8 indicated a second death, the death of a  
9 grandfather shortly after the death of the mother,  
10 and that this was traumatic for Donny. That this  
11 was information contained in the deposition. So  
12 that they would send me highlighted copies of the  
13 grandfather's deposition with that information.

14 Q. So by this time, you know, seven -- July  
15 6th of this year, you had not actually written  
16 your formal report yet, had you?

17 A. Actually, that's not true.

18 Q. You had already written your formal  
19 report?

20 A. I don't know where I was in the process,  
21 but I certainly would have -- would have began.

22 Q. But certainly, by this time, you had not  
23 even reviewed Donny Labelle, Senior's depositions  
24 or videos?

25 A. That's correct.

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1 Q. And they were going to send it to you  
2 subsequent to that?

3 A. That's correct.

4 Q. Were there any other outside sources  
5 that you had used to that point, at least as you  
6 sit here today, that you recollect? Up till 7/6  
7 of 2000, were there any other --

8 A. There were a number of background  
9 documents that I produced for you that were sent  
10 to me, and I reviewed those.

11 Q. Were there any other materials that had  
12 not been sent to you that were subsequently sent  
13 to you for completing your report?

14 A. At this time?

15 Q. Yes.

16 A. Not at this time.

17 Q. So short of the depos, that was about  
18 it?

19 A. And the return of the teacher  
20 information.

21 Q. Okay. The next message is 7/7/2000,  
22 again, from Mr. Burton, and you spoke to him 15  
23 minutes, and it seems like it dealt with the  
24 notice of videotape deposition that we're at  
25 today; is that correct?

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1 A. Yes.

2 Q. The next message is 7/8/2000. Again, a  
3 two to three minute conversation with Mr. Burton,  
4 and this just seems logistical. There were some  
5 pages missing from Mr. Labelle's deposition?

6 A. Actually, that was a message. I didn't  
7 have a direct conversation with Mr. Burton.

8 Q. Okay. It also mentions, it seems  
9 significant missing data. Do you remember what  
10 that was?

11 A. The hard copy of the deposition was  
12 copied incorrectly, so it was missing pages.

13 Q. And were those pages that were missing  
14 deemed by you to be significant?

15 A. I didn't know until I -- because they  
16 were missing.

17 Q. Okay.

18 MS. SCHWARZSCHILD: Just to clarify and  
19 make it easier. The person who copied didn't do  
20 the backs of pages.

21 MR. KLOK: Right, okay. Well, that  
22 sounds significant.

23 Q. All right. So it was just a logistical  
24 snafu?

25 A. Yes.

1 Q. And at that time, it was necessary -- it  
2 says, necessary to watch all five videotapes of  
3 deposition. Was that something that you wanted to  
4 do or was that something that you were told you  
5 needed to do?

6 A. I wanted to review the documents, and  
7 this was the way I would have to review them was  
8 by watching rather than reading the transcript.

9 Q. And then, finally, it says significant  
10 addition of time. I suppose you knew it was going  
11 to take a chunk of a few days?

12 A. Yes.

13 Q. The next message is 7/8/2000, again, to  
14 Mr. Burton; and it was about the same missing  
15 pages, I suppose follow up.

16 A. Right, uh-huh.

17 Q. Then there's a Fed Ex, which I suppose  
18 those are the materials which we received but that  
19 you sent to Mr. Burton first and then was sent to  
20 us, is that --

21 A. I believe so.

22 Q. Okay. And then there's a 7/10/2000  
23 message. Again, a message from Mr. Burton on your  
24 voice mail to give him a buzz.

25 A. Uh-huh.

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1 Q. And you returned that call at 10:30. Am  
2 I reading your notes correctly there?

3 A. Yes, I did. I left a message on his  
4 voice mail.

5 Q. So you're playing phone tag. And then  
6 at 10:40 you finally discuss, again, the materials  
7 -- this little Fed Ex receipt which is the  
8 materials which were disclosed in this case?

9 A. Yes.

10 Q. Was there any discussion -- I mean, I  
11 know you mentioned two other calls subsequent to  
12 that. Was there any more discussion about Donny  
13 Junior on 7/10 or subsequent to that?

14 A. Information that related to him but not  
15 about him directly.

16 Q. I'm going to hand you Exhibit 4.

17 (Exhibit No. 4 was marked for  
18 identification.)

19 Q. Could you identify the documents I gave  
20 you just now?

21 A. It's a billing summary.

22 Q. Is this your billing summary?

23 A. Yes.

24 Q. And was this prepared by you or one of  
25 your staff?

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1 A. Yes.

2 Q. So to date, this is -- is this a  
3 reflection of the work you have done in evaluating  
4 Donny Junior?

5 A. In evaluating Donny? Yes.

6 Q. And then working on this deposition and  
7 working as a testifying expert?

8 A. No.

9 Q. It does not include that? Do you bill  
10 that separately?

11 A. Yes.

12 Q. Okay. Is there any way we can get at  
13 least -- well, let me ask you this. Has there  
14 been any other billing statements or summaries  
15 that you have sent to the lawyers for the tobacco  
16 industry that I don't have here?

17 A. Yes.

18 Q. What are they?

19 A. There was a bill for the time, the  
20 consultation yesterday.

21 Q. Okay. But other than non-up-to-date  
22 information I'm saying, anything previous to 2/27  
23 of 2000, any other billing summaries that are  
24 missing?

25 A. No.

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1 Q. So up till that time that's an accurate  
2 reflection of the time that you worked on this  
3 case?

4 A. Yes.

5 Q. Okay. Let's go to the 11/17/99. I  
6 think these time entries are reflected --

7 A. I'm sorry, I don't know --

8 Q. Do you have that, the 11 -- it's the  
9 second page. Do you not have that?

10 MS. SCHWARZSCHILD: I don't either.

11 Q. Okay. Let me give you mine.

12 MR. KLOK: Do you have it?

13 MS. SCHWARZSCHILD: I'm sure it's in the  
14 file. It's not in the copy you gave us.

15 MR. KLOK: Okay.

16 MS. SCHWARZSCHILD: That's fine.

17 Q. And I wasn't trying to trick you. I  
18 thought that was actually attached. But I think  
19 there are two billing summaries, one for year '99  
20 and one for year 2000 to date.

21 A. Yes.

22 Q. Let's look at that first one. I'd like  
23 to attach that to the back of exhibit -- the next  
24 whatever number we're on.

25 MS. SCHWARZSCHILD: Four.

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1 Q. Is that an accurate reflection of the  
2 time you spent working in 1999 on this matter?

3 A. Yes.

4 Q. Okay. And then I -- I'm looking through  
5 the next page now, the front. There's a 2/17  
6 entry for 20 minutes, then a 2/21 entry for 40  
7 minutes; is that correct?

8 A. Yes.

9 Q. And then a 2 -- there's two 2/29  
10 entries, one for 15 minutes and one for 30  
11 minutes; is that correct?

12 A. Yes.

13 Q. Okay. I will represent to you, although  
14 you may have a memory of this, that this expert  
15 opinion of Exhibit 1 was submitted to us on March  
16 1 of 2000.

17 A. (Witness nods head.)

18 Q. So would it be fair to say that up till  
19 that point in formulating that opinion you have  
20 spent -- I can't see what that last reading is,  
21 but at least in year 2000, an hour and 45 minutes  
22 working on this matter; is that correct?

23 A. No.

24 Q. That's not correct?

25 A. No.

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1 Q. Did you spend more time working on this  
2 matter till then?

3 A. Yes.

4 Q. What else did you do?

5           A.    We don't bill for phone conversations  
6 under ten minutes. So if you added that in, that  
7 could change the overall.

8 Q. Okay. And other than the other phone  
9 conversations under ten minutes, which are  
10 recorded in your phone log --

11 A. Right.

12 Q. -- there's also the additional time that  
13 -- if you could read that to me for the year '99,  
14 I think.

15 A. 1.75 plus .5.

16 Q. Okay. So that would total the time of  
17 your work on this matter when you formulated the  
18 opinion for Donny Labelle as of March 1 --

19 A. Yes.

20 Oct. -- 2000.

Okay. Is it your ordinary practice to  
make evaluations of patients without having  
interviewed them live or visited them?

24 A. Depends on the circumstances and what  
25 I'm asked to do.

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1 Q. Do you do that frequently?

2 A. If I'm asked to review documents and  
3 render an opinion based on those documents, then,  
4 yes, I have done that before.

5 Q. Do you feel that review of a patient  
6 based on document review is as effective as  
7 reviewing someone live?

8 A. Depends what question is being asked.

9 Q. In this case for Donny Junior, do you  
10 think it's as effective to have formulated an  
11 opinion based on records only or having -- do you  
12 think it would be -- well, let's ask that question  
13 first.

14 Do you think it would be an effective --  
15 let me strike that.

16 Do you think it would be effective to  
17 review, do an evaluation of Donny Junior just  
18 based on his records?

19 A. If I can answer the referral question,  
20 then, yes, it's effective. If the referral  
21 question changes or is different, then it may not  
22 be.

23 Q. What was the referral question in this  
24 matter for Donny Junior?

25 A. Were there any data to indicate that

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1 this -- that this child could or could not  
2 participate in the type of deposition or proposed  
3 type of deposition that was put on the table.

4 Q. Did you think that not having evaluated  
5 him live was sufficient to formulate an opinion?

6 A. Given these circumstances, yes, I could  
7 -- I felt I could give an opinion regarding the  
8 likelihood that he would be -- that one method or  
9 another would be more or less difficult for this  
10 child.

11 Q. Do you think it would have been more  
12 effective to have evaluated him live at that  
13 point?

14 A. It may have been.

15 Q. Having evaluated him live, in  
16 retrospect, do you think it would have made a  
17 difference?

18 A. It did not change -- it would not -- the  
19 information I gleaned from my live assessment  
20 would not change my opinion that was based on the  
21 documents.

22 Q. Are there any general guidelines in your  
23 profession in making evaluations of patients?

24 A. Gosh, that's very general. You'd have  
25 to be more specific for me.

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1 Q. Is one of the guidelines that is  
2 recommended as a professional psychologist in  
3 evaluating a patient to visit the patient or  
4 evaluate him live?

5 A. If you are asked to assess the child,  
6 and that was the consultation -- the request or  
7 the evaluation request, to do an assessment of a  
8 child, yes, you would meet with the child.

9 Q. Was part of your referral question or  
10 your charge in this matter, was it -- did it  
11 include making an assessment of Donny Junior?

12 A. After the first opinion was rendered.

13 Q. When was that referral question, when  
14 was that changed at least? And you can  
15 approximate. You don't have to tell me --

16 A. I'm sorry, I'd have to look back  
17 through. It's been a long time so --

18 Q. No, go ahead, go ahead.

19 A. It would be after that 2 -- the 2/17  
20 consultation with Ms. Schwarzschild. When she  
21 actually asked me to do the eval? On -- it would  
22 be sometime after that.

23 (Exhibit No. 5 was marked for  
24 identification.)

25 (Exhibit No. 6 was marked for

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1 identification.)

2 Q. Dr. Simonian, I'm going to hand you two  
3 documents that are marked as Exhibit 5 and Exhibit  
4 6.

5 Let's start with 5. Can you identify  
6 that document for me?

7 A. That is a psychoeducational evaluation  
8 of Donald Labelle, Junior.

9 Q. And the date of examination there that  
10 is recorded is June 8th, 1999; is that correct?

11 A. Yes.

12 Q. And if you note, there's marginalia and  
13 various notes and notations made to the document.  
14 Do you recognize those?

15 A. Yes.

16 Q. What are they?

17 A. They're my notes.

18 Q. Okay. So this is the notes that you  
19 made in reading through the evaluation of 6/8/99;  
20 is that correct?

21 A. Yes.

22 Q. Okay. And I do apologize if the copy is  
23 hard to read. Hopefully, you can help me through  
24 those.

25 But let's go through the marginalia

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1 first. Under relevant background information, and  
2 if I can read it, I'll try to read it and just ask  
3 you if that's what it says. Does it say mother  
4 died two and a half years ago, I guess?

5 A. Mother died approximately two and a half  
6 years ago.

7 Q. Okay. And those underlines are yours as  
8 well?

9 A. Yes.

10 Q. Are there any -- if you can look through  
11 the document quickly. Is there any of this  
12 marginalia or underlining or circling that is not  
13 yours?

14 A. No, I do not believe so.

15 Q. And you can take your time. I'm not  
16 trying to rush you. Make sure that it is yours.

17 A. No, these are mine.

18 Q. Okay. In your professional practice, do  
19 you specialize on children?

20 A. They're one of my areas of  
21 specialization, yes.

22 Q. And do you have numerous patients or  
23 have you had through the years numerous patients  
24 of -- children that you have evaluated?

25 A. Yes.

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1 Q. Could you give me an estimate of how  
2 many children you think you have evaluated?

3 A. It would be difficult. It's numerous.

4 Q. More than ten?

5 A. Oh, yes.

6 Q. More than 100?

7 A. Yes.

8 Q. More than 1,000?

9 A. Probably not.

10 Q. So somewhere between --

11 A. Several hundred.

12 Q. In the hundreds, okay. And I'm not  
13 going to hold your feet to the fire. You can call  
14 me wrong if you 1,200 or something like that.

15 When you looked at this evaluation, what  
16 were your general impressions?

17 A. Regarding what?

18 Q. And I'm referring specifically to  
19 6/8/99. Regarding Dr. Craver's evaluation, did  
20 you have any opinions or did you disagree with  
21 anything that he had written here?

22 A. No, not specifically.

23 Q. So you have no disagreement with his  
24 6/8/99 evaluation?

25 A. Based on what I -- my assessment or

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1 based just on looking at his document?

2 Q. Based on your assessment.

3 A. I found things differently.

4 Q. Okay. What did you find differently?

5 A. I found that Donny was able to answer my  
6 questions, that he talked to me about his mother  
7 very directly and as well as talked to me about a  
8 number of different things. Although he was  
9 initially shy, that he was able after a period of  
10 time to warm up, to establish eye contact, his  
11 affect was varied and appropriate, and it was not  
12 a difficult assessment to conduct.

13 Q. Now, you're talking about your  
14 assessment, correct?

15 A. Yes.

16 Q. When did you do your assessment?

17 A. June 2000.

18 Q. So it's fair to say that your assessment  
19 was of Donny Junior when he was nine years, 11  
20 months old?

21 A. He had just turned 10.

22 Q. So he had just turned 10. It was a year  
23 or so after?

24 A. Yes.

25 Q. Is it possible that a child can change

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1 in his behavior within a year?

2 A. Yes.

3 Q. So is it your testimony that you found a  
4 different child than what is characterized by Dr.  
5 Craver in his 6/8 evaluation?

6 A. In some dimensions, yes.

7 Q. Which dimensions were those?

8 A. The emotional or behavioral issues. The  
9 learning and IQ issues were fairly consistent.

10 Q. Did you find that Donny Junior made good  
11 eye contact?

12 A. Initially or through the --

13 Q. Initially.

14 A. Not initially.

15 Q. Did he walk in initially as a shy child?

16 A. I have no way of measuring that.

17 Q. Okay. But he didn't have good eye  
18 contact initially?

19 A. No, not until I bent down and looked him  
20 in the eye.

21 Q. Was he loquacious initially?

22 A. No.

23 Q. Did you have to prompt him in any way to  
24 bring him out?

25 A. What do you mean by prompt?

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1 Q. Try to engage him in conversation or use  
2 any kind of method to try to get him to discuss or  
3 talk with you.

4 A. I used the same rapport building  
5 techniques I use for any client.

6 Q. And what did you use?

7 A. Conversation about maybe interests,  
8 activities. He had just had a birthday, I believe  
9 it was two days ago, so we talked a lot about his  
10 birthday and those kinds of things.

11 Q. Do you think that it's possible that  
12 Donny Junior responded to you differently because  
13 you're female?

14 A. Possibly.

15 Q. Do you think that maybe because he's  
16 lost his mother he may respond differently to a  
17 female than he would to a male?

18 A. I can't answer that. I don't know.

19 Q. But is it possible?

20 A. It might be possible.

21 Q. Are there any particular items that you  
22 strongly disagree with on this evaluation as you  
23 sit here today looking at it?

24 MS. SCHWARZSCHILD: Objection. Aside  
25 from what she's already testified to?

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1 MR. KLOK: Sure.

2           A. I'm unclear as to what you are asking  
3 me. Is that in addition to what we have just  
4 discussed or --

5 O. That's correct.

6           A.    No. I found some different scores, as  
7 we discussed.

8 Q. What was -- were there any significant  
9 differences in the scores that you found?

10           A. I believe there were some. You can  
11 compare the documents, but I believe there were  
12 some on the -- some differences in the rating  
13 scales. And there were -- there were some  
14 differences in the IQ and achievement data as  
15 well, although I think those are within acceptable  
16 range.

17 Q. So were any of the differences  
18 significant?

19       A. I prefer to look at my evaluation so I  
20 can tell you the actual difference if you'd like.  
21 I believe some of the elevations on the parent and  
22 teacher rating scales may have been slightly  
23 different.

24 Q. Were there any discrepancies or any  
25 strong disagreements with any of Dr. Craver's

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1 conclusions?

2 MS. SCHWARZSCHILD: I really think that  
3 the witness is right when she indicates that in  
4 order to answer your questions fully and  
5 accurately, it would be helpful for her to be able  
6 to look at her report and compare it to your --

7 MR. KLOK: We're going to get there,  
8 Counselor. I just want to --

9 Q. Right now, it's just what you remember;  
10 and if you don't, then we'll move on. But I'm  
11 trying to just test to see if there's anything  
12 that you recall sitting here today that was --  
13 that you have strong disagreements with.

14 A. I don't necessarily agree with his -- he  
15 just made a hypothesis about poor work habits. I  
16 didn't see that. There were no reports of poor  
17 work habits on the measures that I gave, or I  
18 can't recall on the teacher measures that he  
19 gave. Some of it is fairly global, so I'm not  
20 sure of the exact T-scores.

21 As I said before, I did not have extreme  
22 difficulty in talking with him about his mother.  
23 He talked to me in quite some detail about his  
24 mother.

25 Q. Uh-huh.

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1           A. And the recommendations he made are  
2 mostly educational recommendations.

3           Q. Okay. Why don't we look at Exhibit  
4 Number 6. Do you recognize that document?

5           A. Yes.

6           Q. What is it?

7           A. Follow-up psychological assessment.

8           Q. And that date of examination by Dr.  
9 Craver is dated 1/27/2000; is that correct?

10          A. Yes.

11          Q. And I'd like you to look again to the  
12 marginalia and the notes made and the circles and  
13 the question marks and checks and any other  
14 marks. Do those appear -- do you recognize those?

15          A. Yes.

16          Q. What are they?

17          A. They're my marks.

18          Q. Okay. Again, is this your report that  
19 you used and wrote your notes on?

20          A. It's not my report.

21          Q. Is this a report that was given to you  
22 which you wrote your notes on?

23          A. Yes.

24          Q. Okay. Did you find any changes or  
25 anything worth noting comparing the first

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1 evaluation of 6/8/99 to the second one, 1/27 of  
2 2000?

3 A. Yes.

4 Q. What are they?

5 A. I noticed that he included a diagnosis,  
6 DSM-IV diagnosis that was not in his first report.

7 Q. And did you agree with that diagnosis or  
8 do you agree with that diagnosis?

9 A. No.

10 Q. Why not?

11 A. Because I don't -- do not believe that  
12 Donny meets the DSM-IV criteria for an adjustment  
13 disorder with depressed mood.

14 Q. And we discussed that earlier what the  
15 criteria is, correct?

16 A. Yes, we did.

17 (Exhibit No. 7 was marked for  
18 identification.)

19 Q. Okay, Dr. Simonian, I handed you what is  
20 marked as Exhibit Number 7. Do you recognize  
21 this?

22 A. Yes.

23 Q. What is it?

24 A. Report of psychological examination of  
25 Donald Labelle, Junior.

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1 Q. . . And this is your report, is that  
2 correct?

3 A. Yes.

4 Q. Okay. Having handed you the report, I'd  
5 like to turn back to the question of the testing.  
6 What differences did you find between the scores  
7 in your testing and the scores by Dr. Craver that  
8 he got on 6/8/99?

9 A. Donny's score on the CDI -- the  
10 Children's Depression Inventory -- was different  
11 in the two assessments.

## Q. What's a CDI?

13 A. Children's Depression Inventory.

14 Q. Why is that test conducted?

15 A. It's a screen, one way to look at  
16 depressive symptomatology in a child.

17 Q. What differences are suggested by your  
18 results and his?

19 A. I did not obtain an elevation or at  
20 least his ratings did not result in an elevation.  
21 And I believe Dr. Craver says his approached  
22 significance, although his overall score was not  
23 elevated, I believe. Let me look back at that.

24                   Actually, both of us had CDI scores  
25 falling within average limits. He mentioned an

1 elevation of slightly above average, which I don't  
2 know what that means, score on the anhedonia  
3 subscale. That was not present on Donny's  
4 protocol.

5 Q. When you say it doesn't mean, what do  
6 you mean by that?

7 A. I don't know what that means. I don't  
8 know what slightly above average range without a  
9 T-score means.

10 Q. What other scores do you have  
11 discrepancies with?

12 A. Let me look at -- again, on the Revised  
13 Children's Manifest Anxiety Scale, he says that it  
14 approaches significance. I guess I would agree  
15 because neither one of us found clinical  
16 significance on that.

17 Q. And what does that test normally test  
18 for?

19 A. It's, again, a self-report measure of  
20 anxiety.

21 Q. So in that test it sounds like you both  
22 didn't find abnormal scores. So is there really  
23 any discrepancy?

24 A. Well, he does mention a most problematic  
25 domain, and that was not evident on Donny's

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1 ratings at the time of my assessment.

2 Q. Okay. And what other scores do you find  
3 discrepancies with?

4 A. The CBCL score.

5 Q. What's a CBCL?

6 A. Child Behavior Checklist.

7 Q. What does that test evaluate?

8 A. Broad range of behavioral symptomatology  
9 in children.

10 Q. Describe the nature of the discrepancy  
11 between your scores and Dr. Craver's.

12 A. Paternal ratings on the Achenbach Child  
13 Behavior Checklist in my assessment resulted in no  
14 scores of excess of two standard deviations above  
15 the mean for same age and gender children.

16 Q. And what does that result suggest to you  
17 or what is the difference essentially between your  
18 results and his?

19 A. Dr. Craver indicated, quote, his  
20 father's ratings of Donny revealed an excessively  
21 high internalizing T-score; however, I don't have  
22 that T-score, so I can't comment further. And we  
23 received a significantly high score in the area of  
24 withdrawn behavior. Again, I'm not sure what  
25 those terms refer to.

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1 Q. When you interviewed Donny Junior's  
2 teacher, did she indicate to you that Donny was  
3 excessively shy?

4 A. . We did not have direct contacts because,  
5 unfortunately, school was out.

6 Q. So you just mailed the evaluation?

7                  A.      Right.

8 Q. Did her evaluation come back registering  
9 shyness in his behavior?

10           A.     Not at a clinically significant level,  
11   no.

Q. Did it evidence any shyness?

13           A. I'd have to look back on the individual  
14 response form. But again, when you look at  
15 overall psychometric properties as the measure in  
16 that clinical significance, there was no clinical  
17 significance.

18 Q. When evaluating a child and assessing  
19 whether a child would be shy or not, isn't it --  
20 would it be advisable to interview people who have  
21 long-term relationships or exposure to the child  
22 and assess whether or not he actually does or does  
23 not exhibit certain behavior characteristics?

24 A. It may be.

25 Q. Would it be more desirable to do that if

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1 you didn't have an ongoing relationship with the  
2 patient in question?

3 A. I'm sorry, I'm unclear what you --

4 Q. If you don't have an ongoing treatment  
5 regime or consultation regime with the patient in  
6 question.

7 A. I'm not clear what you're asking me.

8 Q. Oftentimes I'm asked to do an assessment. That  
9 does not involve treatment.

10 Q. Correct. But if this child has only  
11 gone to you once, would it be fair to say that  
12 getting other source information about his  
13 behavior would be useful?

14 A. Yes.

15 Q. Did you go out and interview teachers  
16 for your evaluation?

17 A. No.

18 Q. Did you go out and interview family  
19 members for your evaluation?

20 A. No.

21 Q. Did you evaluate any -- did you  
22 interview or evaluate any family members for your  
23 evaluation?

24 A. Mr. Labelle, Senior.

25 Q. And did he give you any indication of

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1 the child's shyness?

2 A. I have my notes there to be specific,  
3 but he indicated some concerns about being shy and  
4 withdrawn and that he was -- I remember he said he  
5 was over -- easily overly stimulated.

6 Q. So your only source for that information  
7 was Donny Labelle, Senior, correct?

8 A. No.

9 Q. Other than your own evaluation.

10 A. No.

11 Q. What other source of information about --

12 A. I have a plethora of records from  
13 school. I had depositions.

14 Q. Was there evidence in that information  
15 you reviewed about his shyness?

16 A. Yes.

17 Q. Was it described as excessive?

18 A. I don't recall whether that term was  
19 used or not.

20 Q. When you normally evaluate children, I  
21 notice you conducted here -- if we look at your  
22 report, there's a series of tests you administered  
23 and -- quite a battery of tests actually. Do you  
24 ordinarily in evaluating children conduct this  
25 type of testing?

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1           A. Yes, with the exception of the  
2 depositions.

3           Q. What are you referring to when you --

4           A. Well, I may not have depositions to  
5 review, but in those --

6           Q. Okay, I'm just focusing on the testing  
7 for now.

8           A. Yes.

9           Q. Is this your standard battery of tests  
10 that you give children?

11          A. Well, it varies, but this wouldn't be  
12 out of the ordinary.

13          Q. Okay. And you had mentioned -- and this  
14 is just following up on what you mentioned -- you  
15 said that this is the first time you have used  
16 depositions in evaluating a child.

17          A. I'm not a forensic psychologist. I'm a  
18 clinical psychologist. So my involvement in  
19 court-involved treatment is very minimal.

20          Q. So I guess other than the six times you  
21 have already talked about on the record, in those  
22 six instances, did you use prior depositions, or  
23 do you remember, for evaluating a patient?

24          A. I don't believe that they were available  
25 or that the context called for that.

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1 Q. Okay. So is this the first time you  
2 have used depositions in evaluating a patient?

3 A. Yes, yes.

4 Q. Okay. Is there a distinction between  
5 instruments used for screening children and  
6 instruments used for diagnosing them?

7 A. Not exactly -- not exactly as you put  
8 it, no.

9 Q. Okay. What is the difference between  
10 screening and diagnosing?

11 A. Some instruments are briefer. The  
12 properties of validity and reliability and  
13 validity being -- does it measure what it purports  
14 to measure may be different. It depends. Some of  
15 them will yield more extensive information than  
16 others. But an assessment can, and often does,  
17 represent a number of different measures, some  
18 which may include screening instruments.

19 Q. Were any of the measures that you used  
20 in these testing -- in the testing you conducted  
21 designed to screen or diagnose?

22 A. The process of diagnosis is much more  
23 complex than the use of any one given test.

24 Q. So I'm not sure if that answers my  
25 question.

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1       A. It's hard to answer your question, I'm  
2 sorry.

3       Q. I realize it's difficult. Let me -- are  
4 you trying to say -- and I'm summarizing. If I'm  
5 unfair, please stop me. Are you trying to say  
6 that these tests are one element in coming up with  
7 a diagnosis?

8       A. Right.

9       Q. Okay.

10      A. That no test is looked at in isolation.

11      Q. So it's just a factor?

12      A. Yes, I guess that would be accurate.

13      Q. And the other factors we have discussed,  
14 it would be your clinical evaluation?

15      A. Well, it would be the totality of the  
16 number of tests taken together.

17      Q. The information you have. The  
18 information you received -- and we talked about  
19 it, school records, depositions, et cetera.

20      A. Uh-huh.

21      Q. Were those prompted by your research or  
22 were these documents that were handed over to you?

23      A. They -- they were given to me. I asked  
24 for the school records and any parental --  
25 previous parental ratings or assessments.

1           Q.   Was there any information that was given  
2 to you that you didn't ask for?

3           A.   I don't -- I don't recall. You know,  
4 there was quite a bit.

5           Q.   That's okay. Children who exhibit  
6 symptoms of excessive -- well, and I say symptoms  
7 like it's a disease. But children who are  
8 excessively shy, does that place them at excessive  
9 risk to depression?

10          A.   Not necessarily. The issue is the  
11 distinction, too, between shyness and social  
12 anxiety.

13          Q.   Okay. And what is that distinction?

14          A.   Social anxiety disorder is a DSM-IV  
15 diagnostic criteria. Shyness is not.

16          Q.   But if a child exhibits behavioral  
17 characteristics where he's excessively shy, more  
18 than the norm, is he at higher risk than the norm  
19 for depression?

20          A.   Not necessarily. Again, the equation is  
21 much more complex in terms of empirically based  
22 models of risk and resiliency.

23          Q.   Even if it's something -- even if the  
24 stressor is the loss of a close parent in the  
25 years when the child is most dependent on that

1 parent?

2 MS. SCHWARZSCHILD: Object to the form.

3 Lack of foundation. Go ahead.

4 Q. Do you understand what I'm saying?

5 A. Could you repeat -- could you rephrase  
6 the question?

7 Q. Assume that the child is shy.

8 A. Uh-huh.

9 Q. And we're talking -- I'm talking about  
10 Donny Junior now.

11 A. Uh-huh.

12 Q. He's shy. Does that make him more  
13 susceptible to depression when he lost his mother?

14 A. Not necessarily. The presence of a  
15 previous stressor may indicate differences in  
16 coping. It may also indicate that with a stressor  
17 those symptoms would be exacerbated.

18 Q. Okay. And you had mentioned one of  
19 those stressors being the recurrence of a tragedy  
20 or recurrence of another stressor.

21 A. Yes, sir.

22 Q. Like his grandfather dying, which  
23 happened I believe subsequent to his mother's  
24 death; is that correct?

25 A. Yes.

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1 Q. Let's turn --

2 A. May I also make a correction?

3 Q. Sure, go ahead.

4 A. On page two, the review of the  
5 deposition, I'm sorry, that's a typo, it's  
6 paternal grandfather, not maternal, I'm sorry.

7 Q. That's fine. That's what this is for.  
8 It helps you correct it.

9 Great. Let's look at that deposition  
10 thing. There's a question I have about that. The  
11 review of background documents provided by Hunton  
12 and Williams.

13 A. Uh-huh.

14 Q. I know you mentioned school records.  
15 Was there anything else?

16 A. There were medical records. There were  
17 records from early child-care involvement. There  
18 were actually quite a few medical records.

19 Q. Were there any -- I'm sorry, I didn't  
20 mean to interrupt you.

21 A. No. Without, you know, looking at the  
22 notebook, I can't be exhaustive so --

23 Q. Okay. Were there any documents or  
24 interviews of neighbors or other people in their  
25 lives that might have been included in those

1 materials?

2 A. Save for the child-care providers and  
3 teachers.

4 Q. Did you have records of interviews with  
5 child-care providers and teachers or are you  
6 talking about the school records now?

7 A. There were documents of -- from the  
8 preschool and from kindergarten, 1st grade, 2nd  
9 grade.

10 Q. What kind of documents were they?

11 A. Report cards with teacher comments, et  
12 cetera. There was a form that mother had filled  
13 out regarding her child. It looked like to be  
14 what might be required to enter day-care or maybe  
15 as ongoing day-care, consultation, a report back  
16 to parents.

17 Q. Were there any documents -- and I guess  
18 I'm not sure if I made it clear, but were there  
19 any documents that showed evidence or interviews  
20 with neighbors or other relations they may have  
21 had over the course of time?

22 A. Not that I recall.

23 Q. Okay. Any investigation reports?

24 A. Not that I recall.

25 Q. Okay. Let's go to page 10 of your

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1 report. On the last paragraph, could you read the  
2 second sentence, please?

3 A. He quickly and easily engaged in  
4 interactions with the examiner and was a warm,  
5 engaging and very likeable child.

6 Q. How was -- and again, if you remember,  
7 how was he warm? Do you have any --

8 A. He laughed, and he told me about his  
9 life, and he asked me about mine, and -- he was  
10 very pleasant.

11 Q. He smiled?

12 A. Yes, he did.

13 Q. You had mentioned that -- and I always  
14 get -- I understand this is kind of difficult  
15 because it's hard to distinguish between a child  
16 who walks in -- you know, just walks in and you  
17 meet them and a child who is shy and then comes  
18 out of his shell, but I'm trying -- at what point  
19 was he comfortable with you in the evaluation?

20 A. Very shortly after he came into my  
21 office and just started talking about things. We  
22 started talking about his birthday.

23 Q. And that opened him up?

24 A. Uh-huh.

25 Q. How would you compare his warmth to

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1 other children you have met?

2 A. Throughout the assessment? He was about  
3 average. Sometimes some children are more -- are  
4 different, present differently.

5 Q. Okay. Did you discuss or look for  
6 coping skills or mechanisms that Donny might have  
7 used to cope with the grief or the loss of his  
8 mother?

9 A. I did.

10 Q. What ones did you find in the course of  
11 your evaluations? What coping mechanisms did you  
12 find him employing or what did he use in order to  
13 deal with the stress of his mother's loss?

14 A. He was engaging in other activities, in  
15 peer activities. He said that he could talk about  
16 his mother and remember some fun things that they  
17 did.

18 Q. Were there any others?

19 A. No, not that I can recall.

20 Q. Did you hear any mentions of playing  
21 doctor?

22 A. He did not report that to me.

23 Q. Did you hear any mentions of liking to  
24 be a trauma -- liking trauma shows or anything  
25 along those lines? Do you remember --

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1 A. He said that he watched those.

2 Q. Is there any clinical significance that  
3 you attribute to him liking that?

4 A. Not liking it. There's a body of  
5 literature that looks at content of TV and  
6 children's behavior and the impact on children.

7 Q. How does one rule out -- in a child like  
8 Donny, how do you rule out adjustment disorder?

9 A. You would look for whether the child is  
10 functioning appropriately in the significant  
11 domains in which a child is asked to function:  
12 home, school, peer. You would look for whether  
13 any of his or her reactions exceed what might be  
14 expected, say, in this case, with bereavement of  
15 the loss of a parent. And you would also look, as  
16 I stated before, as to whether any symptoms shown  
17 were merely an exacerbation of preexisting  
18 symptoms or new symptoms.

19 Q. Do you think Donny Junior exhibited any  
20 preexisting symptoms?

21 A. He was shy.

22 Q. And in your opinion, were his symptoms  
23 exacerbated by the loss of his mother?

24 A. Not according to the records or the  
25 reports of parent and teacher.

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1 Q. And you're talking specifically about  
2 what records, if you remember?

3 A. Mr. Labelle indicated that Donny was  
4 about the same as he was before.

5 Q. And what about the teacher records, what  
6 are you referring to there?

7 A. There wasn't a significant change in the  
8 teacher records.

9 Q. To your knowledge, had Donny Junior ever  
10 been held back in grade level in school before?

11 A. Father indicated he had.

12 Q. I'm confused. I mean, what do you mean  
13 by that? That he had what?

14 A. Father indicated that he held him back  
15 in 3rd grade, so he repeated 3rd grade.

16 Q. Prior to that, was there any indication  
17 that he had been held back to a grade?

18 A. No.

19 Q. How would you characterize -- based on  
20 your tests and based on your review of the school  
21 records, how would you characterize Donny Junior's  
22 academic achievements or his academic performance?

23 A. It's globally commensurate with his IQ,  
24 however there are some areas that he performs more  
25 poorly. There are some areas where he performs

1 better.

2 Q. He's good at math.

3 A. He enjoys it, and he's at -- his scores  
4 would indicate that he's about the 54th  
5 percentile.

6 Q. Did you review his school records prior  
7 to his mother's -- prior to the day his mother was  
8 deceased?

9 A. Yes.

10 Q. What did those grades indicate?

11 A. Variable. He had some difficulty in the  
12 areas -- very consistent with what I found and  
13 with what Dr. Craver found.

14 Q. Would you expect within the normal  
15 context of losing a parent that some of his  
16 developmental skills would -- some of his  
17 developmental progress in his social skills, would  
18 they -- let me put this in lay terms. It might be  
19 easier.

20 Would you expect that his mother's death  
21 might exacerbate or attenuate any of his shyness  
22 or other tendencies?

23 A. It may. There's no indication from the  
24 records or from parental report that it did.

25 Q. In your professional opinion, do you

1 think that Donny Junior's performances at school  
2 might have suffered as a result of his mother's  
3 death?

4 A. Suffered how?

5 Q. Detrimentally.

6 A. As evidenced by -- I'm not sure what  
7 you're asking.

8 Q. Well, as evidenced by him staying back  
9 in 3rd grade.

10 A. He had a pattern of poor performance  
11 that pre -- well, that's consistent now even  
12 though he's been held back, so I'm not -- I can't  
13 really answer that.

14 Q. But would it -- I'm sorry.

15 A. We don't have the assessment -- we don't  
16 have an assessment that's --

17 Q. But wouldn't his pattern of poor  
18 performance -- or is it possible that the pattern  
19 of his poor performance would be exaggerated or  
20 take a turn for the worse with his mother's death?

21 A. In terms of academic achievement profile  
22 or work habits or what --

23 Q. Academic achievement profile.

24 A. It may, but you may expect a more  
25 overall rather than one specific target area being --

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1           Q.     Do you think that his repeating 3rd  
2 grade in any way was as a result of his mother's  
3 death?

4           A.     I can't answer that.

5           Q.     You don't have a professional opinion  
6 one way or another?

7           A.     We don't have the information for me to  
8 render that professional opinion. Father said  
9 that he felt he wasn't doing well enough  
10 academically. The teacher indicated differently.

11          Q.     Do you have a professional opinion as to  
12 whether or not his academic performance was -- or  
13 could be worsened by his mother's death based on  
14 the evidence in the record?

15           MS. SCHWARZSCHILD: Object. Asked and  
16 answered.

17          A.     I -- it may be in a more general way.  
18 Whether that accounts for the retention or any of  
19 the specific deficits in his profile, I can't be  
20 sure of that.

21          Q.     So is it your response that you're not  
22 sure based on --

23          A.     No. My response is, given the data and  
24 given that we don't have achievement data prior to  
25 that, it's hard to make that comparison.

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1 Q. And when you talk about achievement  
2 data, where are you referring to specifically?

3 A. The Woodcock Johnson.

4 Q. So it's one of the tests, of the  
5 numerous tests that were conducted?

6 A. Yes.

7 Q. By the same token, that doesn't rule it  
8 out, does it?

9 MS. SCHWARZSCHILD: Object. Asked and  
10 answered?

11 A. I can't make that distinction. That's  
12 the best answer I can give you.

13 Q. Okay. So is your answer basically there  
14 is no indication because of prior testing?

15 MS. SCHWARZSCHILD: Objection. This is  
16 the sixth time she's been asked the same  
17 question. She's given you her answer.

18 A. When we compare -- make those  
19 comparisons more definitively, it's -- if we had  
20 pre -- data preceding the stressor, then we could  
21 make those comparisons. We don't have data,  
22 similar data preceding that.

23 Q. In your clinical experience, have you  
24 seen where stressors like this in children have  
25 had those results where a child has either had

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1 worse performance academically in school or worse  
2 behavioral performance as a result of the  
3 stressor?

4 A. It can.

5 Q. And in those instances, did you have the  
6 benefit of prior information or test results prior  
7 to the stressor?

8 A. In some cases.

9 Q. Have you also ever made -- have you ever  
10 made an evaluation of any child without having  
11 prior test results where you have concluded that a  
12 stressor has lead to some either behavioral or  
13 academic, either, under performance?

14 A. I would have said it may have been a  
15 contributing factor.

16 Q. Okay. Do you think that in Donny's case  
17 it could be a contributing factor?

18 MS. SCHWARZSCHILD: Object. Again,  
19 she's answered that question.

20 A. The issue is that the data here  
21 comparing the teachers do not support that. I  
22 have no other data on which to base that.

23 Q. But my question is different. My  
24 question is may it be?

25 MS. SCHWARZSCHILD: That's not a

1 different question. You asked her before was it  
2 possible. I don't know the difference between  
3 possible and may.

4 A. I'm sorry, I don't understand what  
5 you're asking me. I'm trying to answer it as  
6 clear as I can. There are a number of ways I can  
7 make that distinction based on numerous sources of  
8 data. I have two of those, parent and teacher  
9 data. I don't have achievement data. I can make  
10 a decision based on the parent and teacher data,  
11 which indicate consistent performance both  
12 behaviorally and academically both preceding and  
13 following mother's death.

14 Q. All right. Let's look at page 10 and 11  
15 of your report. I'm looking towards the bottom of  
16 it, so I think you might be on page 10 already,  
17 but if not.

18 In the last -- I think the last sentence  
19 of page 10, do you see that, where it starts with  
20 Sattler?

21 A. Yeah, uh-huh.

22 Q. You say in your report that he was not  
23 pathological in his grief, but isn't the grieving  
24 process a continuum especially for children where  
25 the grief may not be pathological but is still a

1 significant concern?

2 A. The question to a clinical psychologist  
3 would be would the grieving exceed what would be  
4 expected given the loss.

5 Q. And in your estimation, did it?

6 A. He was showing no signs of pathological  
7 grieving.

8 Q. Are there any special considerations in  
9 evaluating a child where there may not be any  
10 signs of pathological grieving, but there are  
11 still concerns that are sensitive and different to  
12 a child as to an adult that you have to take into  
13 consideration?

14 A. I'm not quite sure what you're asking  
15 me, I'm sorry.

16 Q. Well, wouldn't it be -- let me try to  
17 rephrase this.

18 Aren't there any significant or  
19 sensitive issues with children that even though  
20 they don't exhibit pathological grieving that you  
21 ought to be sensitive to with a stressor of this  
22 kind, meaning the death of their mother?

23 A. As you look at those symptoms that  
24 Sattler has defined, those are pretty far-reaching  
25 and covering multiple areas of functioning. They

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1 are fairly comprehensive.

2 Q. So if those patterns -- if those  
3 characteristics aren't met, then one shouldn't  
4 consider any other factors?

5 A. That's not what I said.

6 Q. What other factors would one try to  
7 consider?

8 A. You look at change in functioning, an  
9 inability to meet the life demands.

10 Q. Given that a child could endorse items  
11 such as I feel alone all the time, I worry about  
12 aches and pains all the time, and I want to kill  
13 myself on a measure such as Children's Depression  
14 Inventory, which is I think one of the tests we  
15 discussed earlier, can't someone fall within the  
16 average range of a test like that in the overall  
17 score but still there may be issues of concern  
18 raised by some of the questions or issues raised  
19 in that test?

20 A. I'm sorry, did he? I don't have data to  
21 indicate that he did make those statements. Is  
22 there something I don't have?

23 Q. Well, let's look at page 6 of your  
24 report. Towards the bottom, it says -- do you see  
25 where it says Donny's self-report ratings resulted

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1 in a low score on the Children's Depression  
2 Inventory, a measure of depressive symptoms in  
3 children. Do you see that?

4 A. Yes.

5 Q. And I think this is one of the scores  
6 you said you got different results; is that  
7 correct?

8 A. Globally not. It's just that he made a  
9 point of commenting about -- because both of our  
10 scores fell within the average limits.

11 Q. So --

12 MS. SCHWARZSCHILD: Just so the record  
13 is complete, we're comparing Dr. Craver with Dr.  
14 Simonian?

15 MR. KLOK: Correct.

16 Q. And what I'm driving at, I suppose, is  
17 -- let me ask you this question.

18 If during this test a child endorses  
19 items such as, like, I feel alone all the time or  
20 I want to kill myself, even though his score may  
21 come out as an average score in this Children's  
22 Depression Inventory, aren't those issues that  
23 should be given special attention in spite of the  
24 score?

25 A. Those are critical -- some of those are

1 critical items, so yes.

2 Q. But it is -- is it mathematically  
3 possible to score on some of those critical items  
4 and still get an average score?

5 A. I'm not sure at which point that would  
6 change, so I can't answer that. Depends on the  
7 number of questions and the intensity of the  
8 rating.

9 Q. Okay. Assuming that were so, assuming  
10 that it is mathematically possible, if someone  
11 were to score an average score on that test and  
12 come up with some of those descriptors, that would  
13 be an issue for special consideration, would it  
14 not?

15 A. Are you asking me whether Donny had  
16 those?

17 Q. Right now I'm asking you generally.

18 A. You would pay attention to that, yes.

19 Q. And if Donny had made any of those  
20 statements, then you would have to pay attention  
21 to those as well?

22 A. I would have noted that, yes.

23 Q. Okay. Given that a teacher could  
24 indicate that a child -- and let's turn to page 8,  
25 and now I'm looking at the Behavior Assessment

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1 System for Children, which is I guess that last  
2 paragraph on the page before that table.

3 A. Yes.

4 Q. Given that a teacher could indicate that  
5 a child talks about killing self on a Child  
6 Behavior Rating scale and still result in an  
7 average score overall or on a subscale, shouldn't  
8 one be cautious of looking at or reporting only  
9 the subscale or overall scores?

10 A. Again, if there were items as those,  
11 those come up as critical items, you would report  
12 those.

13 Q. Okay. So if the critical items came up,  
14 you would report them?

15 A. Yes.

16 Q. And is that something you do ordinarily  
17 in your practice?

18 A. Yes.

19 Q. Let's go back to page 7. I think on the  
20 first paragraph there, at the last sentence, do  
21 you see that, where it says, Donny evidenced a  
22 pattern of responses on this measure which are  
23 indicative of a desire to present himself  
24 positively or in a socially desirable manner. Do  
25 you see that?

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1       A. Yes.

2       Q. On a Children's Manifest Anxiety Scale  
3 given those -- that interpretation, I suppose, or  
4 your notes, should one be concerned about whether  
5 or not Donny was masking his behavior?

6       A. You may be concerned about that.

7       Q. And when I mean masking, I suppose I  
8 mean giving answers he thinks you want to hear as  
9 opposed to giving the answers he feels?

10      A. That could happen.

11      Q. Is it possible that Donny was also  
12 masking his feelings about his mother's death?

13      A. Could be possible.

14      Q. Let's go back to page 8. If we look at  
15 the Behavior Assessment System for Children, at  
16 least the results you obtained, I notice that the  
17 T-score for the internalizing problems --

18      A. Are you talking about the teacher data?

19      Q. Yeah.

20      A. Yes.

21      Q. The score was 39; is that correct?

22      A. The T-score is 39.

23      Q. And then for the next set of data below,  
24 adaptability was 59; is that correct?

25      A. That's not the next one down, but

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1 further down, yes.

2 Q. I mean the next group.

3 A. Uh-huh.

4 Q. Okay, under adaptability.

5 Okay. Are the average scores within a  
6 standard deviation of ten on that rating? There's  
7 a score of 39 and --

8 A. I gave you actually T-scores and then  
9 percentile rankings.

10 Q. Okay. And if you could, describe the  
11 difference between the T-scores and the percentile  
12 rankings.

13 A. It's a different distribution. And in  
14 general, on the first part of this -- this measure  
15 up to somatization, the score -- high scores would  
16 be of concern. So the low scores are not  
17 elevations. On the adaptive skills, you are  
18 looking for actually low skills as being  
19 problematic. So it's the reverse.

20 Q. Okay. Let's turn to page 11.

21 VIDEOGRAPHER: Counsel, can we go off  
22 the record to change tapes?

23 MR. KLOK: Sure.

24 (Off-the-record discussion.)

25 Q. All right. Dr. Simonian, let's turn to

1 page 11 and 12. Are you there?

2 A. Yes.

3 Q. Okay. If we look at the last paragraph,  
4 could you read that paragraph?

5 A. On page 11?

6 Q. Please, yes, and it continues onto page  
7 12.

8 A. Given Mr. Labelle's self-report data, it  
9 appears that he is overwhelmed by the stressful  
10 characteristics he perceives in his child and his  
11 personal life circumstances. It is recommended  
12 that Mr. Labelle seek the services of a consulting  
13 psychologist to receive training in systematic  
14 child behavior management techniques to address  
15 the pattern of difficulty, behavioral difficulties  
16 perceived in the home setting. In addition, he  
17 should receive educational information on  
18 realistic developmentally appropriate expectations  
19 for children as there is a self-reported  
20 discrepancy between the way this parent views his  
21 child and his idealized or expected child. It is  
22 further recommended that given Mr. Labelle's  
23 concerns about growth hormone treatment for his  
24 child, i.e. financial and logistic caregiver  
25 concerns, that he receive further counseling about

1 the specific nature, duration, and predicted  
2 outcome of possible treatment so that he can make  
3 a decision that is in the best interest of his  
4 child.

5 Q. Have you ever experienced or noted  
6 situations in your clinical practice where a child  
7 may be more comfortable or will hold it together  
8 -- let me strike that.

9 Have you ever been in situations in your  
10 clinical practice where a child will be able to  
11 hold it together in a school scenario, but once he  
12 comes home, he may act out behaviorally or other  
13 things in an environment where he's comfortable?

14 A. There is a reciprocal interaction  
15 between behavior and environment.

16 Q. And so what -- I'm not sure what that  
17 means.

18 A. That environment does play a role in  
19 behavior and can play a role in behavior.

20 Q. So there is -- and I think my question  
21 was answered. Have you ever observed that kind of  
22 behavioral pattern in your practice where a child  
23 will act one way in school and act another way at  
24 home?

25 A. I have seen inconsistencies in behavior

1 across settings.

2 Q. Okay. So it is possible that -- and  
3 correct me if I'm wrong. But do you think it's  
4 possible that Donny Junior may exhibit  
5 inconsistent behavior patterns between home and  
6 school?

7 A. That's what father is reporting.

8 Q. And do you think that's possible?

9 A. Yes.

10 Q. Okay. Let's go back to, I think they're  
11 Exhibit 5 and 6, but the two reports from Dr.  
12 Craver. What I'd like to do is go through the  
13 marginalia if we could and have you -- if you can  
14 read them, because some of them I can't even  
15 read. And it's not a reflection of your  
16 handwriting. It's more of a reflection of the  
17 photocopying. So to the extent you can, maybe you  
18 can go through them with me.

19 A. Sure.

20 Q. On the first page -- and I'm looking at  
21 6/8/99's examination report. What does it say on  
22 that second -- I know you already read the first  
23 one. What does it say on that second -- third  
24 paragraph to the left?

25 A. Moved approximately one year after

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1 death, began new school August '98.

2 Q. Okay. And then on the next page, there  
3 is -- well, I guess let's look at the underline on  
4 the first page first. Was there any particular  
5 reason why you underlined always tended to be shy  
6 and a reserved child?

7 A. Yes.

8 Q. What was that? Why?

9 A. That was a reference to historical  
10 behavior patterns.

11 Q. And then in the next -- the next  
12 paragraph, low grade level work habits, poor  
13 attention span and weak organizational skills.

14 A. Uh-huh.

15 Q. Would that be the same reason?

16 A. Yes.

17 Q. Okay. And then underneath that,  
18 extremely shy and introverted child is also  
19 underlined, and that's the last paragraph of page  
20 one of this report, for the same reasons there as  
21 well?

22 A. Yes.

23 Q. Okay. And then I notice, I guess -- I'm  
24 not sure if there's any reason, but Donny's  
25 end-of-the-year grades, is that -- it just says

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1 end-of-the-year I guess is underlined. Is there  
2 any --

3 A. I think that was a stray mark.

4 Q. Underneath -- the next page there's -- I  
5 suppose you're looking for a scale, and that's why  
6 you put scale and a question mark?

7 A. Right.

8 Q. And then you circled, in the middle of  
9 the page on the second page, difficulty sleeping.  
10 Any particular reason?

11 A. I thought it was noteworthy that he was  
12 unable to fall asleep independently.

13 Q. Why was that noteworthy?

14 A. Because the child was eight years, 11  
15 months of age, almost nine years of age and was  
16 continuing not to be able to sleep independently.  
17 Developmentally, that's what you might expect for  
18 a child that age.

19 Q. And then on -- I think under  
20 developmental, the heading developmental history,  
21 in mid paragraph, it says, poor fine and motor  
22 gross -- did I read that right? Poor fine motor  
23 and gross motor skills underlined..

24 A. Uh-huh.

25 Q. Any particular reason?

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1 A. That was because otherwise the  
2 developmental history was unremarkable.

3 Q. Okay. And then towards the bottom, the  
4 last mark says picky eater.

5 A. Right.

6 Q. Is that indicative of anything, a child  
7 who is a picky eater?

8 A. I underlined that because they said he  
9 was small so --

10 Q. He wasn't getting enough calories I  
11 guess.

12 A. I wasn't sure.

13 Q. Page three, I can't read that. Can you  
14 help me with that? There's -- on the very top  
15 right. I know the bottom says, past age if that's  
16 correct.

17 A. Oh, that is past the developmental age  
18 for dress-up play. You start to be nine, most  
19 kids are starting to go into some different  
20 things.

21 Q. Okay. So that shows a little bit slower  
22 development than most kids his age?

23 A. Not necessarily. You would want to look  
24 for the other types of play the child was  
25 exhibiting. They aren't referenced there.

1 Q. Let's go to the underlined portion. I  
2 guess that refers -- we can save time here.  
3 You're referring to the underlined portion with  
4 the question mark at the bottom of that paragraph,  
5 correct? That's what we just discussed?

6 A. The pretend play, I would want to know  
7 more about that.

8 Q. Okay. Did you? Did you ask him any  
9 more about --

10 A. Uh-huh.

11 Q. What did you find out about that?

12 A. He said -- that's when he told me he  
13 liked to sit down and watch those shows, but that  
14 he -- I asked him if he dressed up, and he said  
15 no.

16 Q. Okay. And he never reported to you his  
17 play doctor game, did he?

18 A. No.

19 Q. Okay. I notice the first underline on  
20 that first paragraph, it says, reportedly always  
21 engaged in a great deal of elaborative pretend  
22 play, used to play cancer?

23 A. Uh-huh.

24 Q. Where he could not -- where he would be  
25 a doctor at a desk, and Mr. Labelle has assumed

1 that this is partly a way that Donny has attempted  
2 to deal with his mother's death.

3 A. Uh-huh.

4 Q. Do you recall reading in Donny Labelle's  
5 deposition the circumstances of the last few days  
6 of Ms. Labelle's life?

7 A. Donny? Which, the --

8 Q. I'm sorry, Donny Senior's deposition, do  
9 you recall reading an account --

10 A. I watched it. I watched it. I wasn't  
11 able to read it.

12 Q. You watched it. Well, do you recall?

13 A. Globally, yes.

14 Q. Was there anything in particular that  
15 struck your attention about those last few days  
16 and how it might have affected Donny Junior?

17 A. That he was sent away from the  
18 hospital.

19 Q. What do you remember about that  
20 incident?

21 A. That -- according to Donny or according  
22 to Mr. Labelle or --

23 Q. According to Donny Senior in the  
24 deposition.

25 A. He said that they -- that he -- they

1 sent Donny Junior away from the hospital, and he  
2 said he told him that his mother didn't want him  
3 to see her, and then he said but -- and I'm not  
4 doing this exactly.

5 Q. Uh-huh.

6 A. But he said something to the effect of,  
7 but I couldn't do that.

8 Q. Okay. Did you discuss that incident  
9 with Donny Junior when you evaluated him?

10 A. Uh-huh, yes.

11 Q. What did he tell you, if you remember?  
12 And you can look back.

13 A. I'll have to look at my report. I have  
14 to see where I put that. Give me a minute.

15 Q. That's okay.

16 A. It's on page 7. When asked about being  
17 sent away from the hospital for his mother's  
18 death, he stated that it was all right because he  
19 was able to go to a friend's house and that he was  
20 happy because he did not have to go to school.

21 Q. Is there anything unusual about that  
22 reaction?

23 A. Not for a child at that age, not  
24 particularly.

25 Q. Is there anything else that you recall

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1 about Donny Senior's recount of what happened  
2 those last few days?

3 A. In the hospital? Outside the hospital?

4 Q. Well, from the time that he took his  
5 wife to the hospital from his house, is there  
6 anything that was of particular interest to you  
7 when evaluating Donny Junior?

8 A. That they -- just I noted the amount of  
9 time that he indicated that they spent there.

10 Q. Is there anything else? I mean, we have  
11 discussed the -- Donny Junior being sent away, he  
12 remembers that, and then we discussed the amount  
13 of time. Is there any other incidents or any  
14 other facts that stick in your mind about that  
15 period of time that was important to you in  
16 evaluating Donny Junior?

17 A. No.

18 Q. Okay. Let's go on to the physical  
19 appearance on page three of this 6/8/99 report.  
20 You underlined appears to be much younger than his  
21 chronological age.

22 A. Uh-huh.

23 Q. Why was that significant to you?

24 A. Because he wasn't meeting age  
25 expectations according to Dr. Craver.

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1 Q. And did you confirm -- is that confirmed  
2 by your physical evaluation of Donny Junior? Did  
3 you find that he looked --

4 A. I'm not a physician. I did -- I  
5 reported in my report that he appears much younger  
6 as well.

7 Q. Okay. I notice then under that, it says  
8 delays in his height, is also delayed in his  
9 weight, and that's underlined.

10 A. Uh-huh.

11 Q. Did you make those same observations or  
12 -- when you evaluated Donny Junior?

13 A. He looked proportionate for -- his  
14 weight was proportionate to his height, but he  
15 looked small.

16 Q. And is there any significance beyond the  
17 physiological significance? Is there any  
18 psychological significance to that?

19 A. To short stature?

20 Q. Short stature and shorter -- you know,  
21 and low weight.

22 A. Yes.

23 Q. What is it?

24 A. There are studies of children with short  
25 stature that some have indicated that they are at

1 higher risk for a range of behavior problems and  
2 self-esteem issues.

3 Q. You had mentioned that his birthday was  
4 around -- was it June or July of -- in the  
5 summertime, correct?

6 A. His birthday is June 24th, 1990.

7 Q. And for a child of Donny Junior's age to  
8 go into a classroom, isn't -- that isn't either  
9 young for his grade or old for his grade because  
10 he was born in the summer on average -- you know,  
11 children -- or do you know this?

12 A. It would depend on the constellation of  
13 the classroom. I can't make this comparison to  
14 his classmates.

15 Q. Do you have any knowledge of how  
16 children are selected for grade levels?

17 A. I know the cut-off point is September,  
18 August or September.

19 Q. So that puts -- places Donny closer to  
20 the cut-off period?

21 A. Closer than what?

22 Q. When you look at a calendar, he's closer  
23 to the cut-off period than most children might be  
24 in a classroom, don't you think?

25 A. He would be three to four months away

1 from the cut-off.

2 Q. Okay. So it puts him towards the last  
3 quarter of the cut-off period, doesn't it?

4 A. I suppose he would fall in that last  
5 quarter.

6 Q. All right. Let's look at the next  
7 paragraph, previous evaluations.

8 A. Uh-huh.

9 Q. You underlined poor gross and fine motor  
10 skills, poor handwriting, being easily distracted  
11 and having difficulty completing assignments.

12 A. Uh-huh.

13 Q. Did you find that was true in your  
14 evaluation?

15 A. He did show a pattern of visual -- delay  
16 of -- under the measure of visual motor  
17 integration, and as well if you look at the  
18 difference between his verbal and performance IQ,  
19 there was a significant difference.

20 Q. The next paragraph, it says -- I think  
21 you underlined the portion where it says, he did  
22 not pass the articulation portion and has been  
23 scheduled for further evaluation. Why was that  
24 significant for you?

25 A. It's historical reference to his

1 performance.

2 Q. Did you do any follow-up on that  
3 assessment when you did your evaluation?

4 A. I screened. It's one of the things I  
5 consider, the content and quality of speech. I'm  
6 not a speech pathologist, but I do -- I look at  
7 whether I can understand the child.

8 Q. And what -- do you agree with that  
9 assessment?

10 A. With what assessment?

11 Q. With the assessment here that he did not  
12 pass the articulation portion and has been  
13 scheduled for further evaluation. Do you think --

14 A. I don't know what the articulation  
15 portion is.

16 Q. Did you find him articulate, Donny  
17 Junior?

18 A. What this -- articulation in this  
19 context means can you understand his speech.  
20 Could I understand his speech?

21 Q. Yes.

22 A. Yes, I could.

23 Q. Okay. Page 4, the next sentence says --  
24 and this is where you underlined it. It says on  
25 achievement screening test Donny was within normal

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1 limits in reading, decoding and arithmetic  
2 computation, but was only at the 13th percentile  
3 in spelling skills.

4 A. Uh-huh.

5 Q. Did you agree with that or did you find  
6 those -- did you make those same findings in your  
7 evaluation or did you --

8 A. It was globally consistent.

9 Q. What does it say above that?

10 A. That that was from a previous school  
11 evaluation.

12 Q. Okay. And you had access to that same  
13 school evaluation or do you not know?

14 A. Not at this time, but that is just --

15 Q. No, no, in making your report, did you  
16 have access to that evaluation?

17 A. Yes.

18 Q. Okay. What is ADHD symptoms?

19 A. Attention deficit hyperactivity  
20 disorder.

21 Q. And again, I notice you circled that  
22 Connor's Teaching Rating Scale, and then you said  
23 there was no -- you underlined the portion where  
24 it says, no significant ADHD symptoms were noted.

25 A. Yes.

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1 Q. Did you make any -- in your evaluation,  
2 did you make any assessment whether there was ADHD  
3 in his --

4 A. Yes.

5 Q. And what was your conclusion?

6 A. No.

7 Q. Then the next paragraph there's a --  
8 there's, I guess, a scribble to the right. Do you  
9 know what that says?

10 A. No, I don't. It might have been parent,  
11 just as a reference.

12 Q. It looks like it's cut off from a copy.

13 A. Yeah.

14 Q. Then you circled the anxiety portion of  
15 that paragraph.

16 A. Uh-huh.

17 Q. Any particular reason?

18 A. That was the elevation that was noted.

19 Q. And did you make a finding of that same  
20 elevation or not?

21 A. I didn't use that same measure. I gave  
22 parent measures that are -- begin on page 7.

23 Q. Page 7 of your report?

24 A. Right.

25 Q. And did you find that his measures were

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1 high for anxiety?

2 A. In terms of parent report? No.

3 Q. Okay. And then under behavioral  
4 observations, which is towards the bottom of this  
5 page, page four, you underlined responded to the  
6 examiners yes or no questions by shaking or  
7 nodding his head?

8 A. Uh-huh.

9 Q. Any particular reason?

10 A. Just thought it odd that he asked him  
11 yes/no questions.

12 Q. And then subsequent to that, next  
13 sentence, you underline, no hesitation in him  
14 accompanying the psychologist to the evaluation  
15 room. I think the underline goes on.

16 A. Yes.

17 Q. And he was cooperative throughout the  
18 session.

19 A. Right.

20 Q. And it goes on that he did not initiate  
21 any spontaneous conversation and remained  
22 cooperative in responses throughout the  
23 examination and you put a star next to that.

24 A. Uh-huh.

25 Q. Why was that significant?

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1       A. I was confused because if he was  
2 cooperative, that would imply that he might have  
3 been responding or -- in the questioning or the  
4 interview. And also, the fact that he went  
5 readily and he was cooperative and responsive is a  
6 little bit at odds with the other part of not  
7 responding to questions.

8       Q. And when you -- do you put stars on  
9 items that you think are of more importance?

10      A. Oh, I just always mark like that. It's  
11 not necessarily a graded system.

12      Q. Just a note?

13      A. (Witness gesturing.)

14      Q. Okay, let's go to page five. Again, you  
15 underlined cooperative nature. Is that for the  
16 same reasons that you underlined it before?

17      A. Yes.

18      Q. And then towards the bottom, maybe you  
19 can help me decipher.

20      A. Uh-huh.

21      Q. You put a box around the IQ index of  
22 that test.

23      A. Uh-huh.

24      Q. And then I can't read the right portion  
25 of that.

1 A. Significant VIQ PIQ difference.

2 Q. Okay. And what does that suggest to  
3 you?

4 A. It suggests a pattern of verbal --  
5 performance on some tests that loaded on verbal  
6 language abilities which is different  
7 significantly from those subtests that loaded on  
8 the perceptual organizational skills.

9 Q. Did you find similar results when you  
10 tested Donny Junior?

11 A. I did.

12 Q. Okay. And then to the right of that  
13 percentile rank, I think there's an arrow coming  
14 out of the 45, although it may be the whole group,  
15 I'm not sure, and I can't read.

16 A. Individual subtest scores, question  
17 mark.

18 Q. Is that you want more information?  
19 Basically, is that what you're looking for?

20 A. It would have been nice to look at the  
21 subtest data, yeah.

22 Q. Okay. Then towards the bottom of the  
23 page in that paragraph, you underlined 89 falls  
24 within the upper limits of the low average, and I  
25 think it's referring to the full scale IQ score.

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1 A. Right.

2 Q. Why is that significant?

3 A. It just tells me his IQ.

4 Q. And what -- did you -- did you do an IQ  
5 examination as well?

6 A. I did.

7 Q. And what -- were your findings similar?

8 A. Yes, they were.

9 Q. Okay. Let's go to the next page, page  
10 6.

11 This is the last sentence of the first  
12 paragraph on page 6. You underlined, he -- in  
13 fact, he had -- and this portion isn't underlined,  
14 but I think there has to be context here. In  
15 fact, he had an extremely difficult time on  
16 nonverbal problem solving tasks involving both  
17 deductive and inductive reasoning skills.

18 A. Uh-huh.

19 Q. And why was that significant?

20 A. Just gave me information about the  
21 pattern of his performance.

22 Q. And did your testing yield the same or  
23 similar results?

24 A. It did.

25 Q. Okay. Then in the third paragraph you

1 underlined on the verbal comprehension factor.

2 A. Uh-huh.

3 Q. And again, average, I guess that's his  
4 result. And then -- and then later on in that  
5 page you did the same with a perceptual  
6 performance index score and then you highlighted  
7 the score as a separate test.

8 A. Uh-huh, it's the same test.

9 Q. Oh, excuse me.

10 A. Different indices.

11 Q. Different indices on the same test?

12 A. Uh-huh.

13 Q. That was significant to you because you  
14 just were noting the scores, correct?

15 A. Correct.

16 Q. And did your findings diverge with  
17 these?

18 A. Not significantly.

19 Q. Okay. Then later on down the page, I  
20 think -- I don't know what paragraph that is, the  
21 fifth paragraph. There's marginalia there. It  
22 says VMI?

23 A. Visual Motor Interrogation Test is the  
24 name of the test.

25 Q. And then again you underlined the

1 score.

2 A. Uh-huh.

3 Q. And then noted, I guess, or underlined  
4 the portion that notes that it was in the lower  
5 limits of the low average range?

6 A. Uh-huh, uh-huh.

7 Q. And resulted in an age equivalency of  
8 six years and two months.

9 A. Right.

10 Q. Were your findings consistent with  
11 those?

12 A. Globally.

13 Q. I didn't hear, I'm sorry.

14 A. Globally.

15 Q. Okay. But not specifically?

16 A. Well, if we were to calculate the age  
17 difference discrepancy, it's off by a couple  
18 months. It's approximately two years difference.

19 Q. Okay. So there's no significance  
20 divergence that --

21 A. Not in my opinion.

22 Q. Okay. The next paragraph has 3rd grade  
23 year underlined.

24 A. Uh-huh.

25 Q. And it points toward grade equivalent.

1 A. Uh-huh.

2 Q. And then you circled the areas where I  
3 suppose he was deficient, is that correct,  
4 dictation and writing samples?

5 A. Where his scores were lower, yes.

6 Q. Oh, sorry. Why was that significant to  
7 you?

8 A. Because in terms of relative pattern of  
9 performance, he was lower in those areas than the  
10 other three.

11 Q. Let's go to page 7. Again, this is --  
12 you highlighted the test that was taken in the  
13 fourth paragraph. You put a box around it.

14 A. Uh-huh.

15 Q. And then you just note the results of  
16 the score.

17 A. Uh-huh.

18 Q. And note that it was slightly above  
19 range -- above average range; is that correct?

20 A. No. I circled that the total CDI score  
21 falls within average limits.

22 Q. Okay. And then you underline slightly  
23 above average range?

24 A. Right.

25 Q. When dealing with the subscale area of

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1 -- and I don't know if I can pronounce this right  
2 -- anhedonia?

3 A. Very close. Anhedonia, yes.

4 Q. What is that?

5 A. Anhedonia is the inability to feel  
6 pleasure.

7 Q. Okay. So is that an empathy measure?

8 A. No. It's whether or not you experience  
9 joy or happiness or get pleasure out of things  
10 that you may do.

11 Q. Okay. And then, again, you note the  
12 next test that was done, the Piers-Harris Children  
13 Self Concept Scale.

14 A. Uh-huh.

15 Q. And then you note that it fell within  
16 normal limits?

17 A. Yes.

18 Q. But it also -- you note also that his --  
19 even though his score on the anxiety subscale of  
20 this measure approached the significant range, did  
21 that -- what does that suggest to you?

22 A. I circled it because I don't know what  
23 approached means. I don't know the T-score and  
24 the relative score.

25 Q. So was there data that you were missing

1 in order to see?

2 A. He did not report the T-scores. That it  
3 could approach significance is not clinically  
4 significant.

5 Q. Okay. And then at the bottom of the  
6 page, you have -- you have underlined the Revised  
7 Children's Manifest Anxiety Scale.

8 A. Uh-huh.

9 Q. And again, noting the results, the  
10 T-score and circling overall T-score of 59  
11 approaches the significant. Is that the same type  
12 of problem you had with the last time you circled  
13 approached?

14 A. Yes.

15 Q. And then you circle -- you underline  
16 most problematic domain, and then you wrote  
17 something, and it looks incomplete actually.

18 A. I know what that is. No mention of  
19 actual score.

20 Q. So, again, there's not enough  
21 information; you would like some more information  
22 to be able to see how you reached that result, is  
23 that --

24 A. No. My point was that it would be  
25 difficult to conclude clinical significance

1 without having --

2 Q. More information?

3 A. -- without having T-scores that are in  
4 the elevated range as those tests were designed,  
5 standardized, and normed.

6 Q. Okay. Then next paragraph, CBCL. What  
7 is CBCL?

8 A. Child Behavior Checklist.

9 Q. And then you have again marginalia  
10 connected to it, do you know what that says?

11 A. Parent rating, not self.

12 Q. Okay. So you're distinguishing between  
13 parent rating and --

14 A. Uh-huh.

15 Q. And then I think there's an underline in  
16 that paragraph just above that -- excessively high  
17 internalizing T-score?

18 A. Uh-huh.

19 Q. And then high score in the area  
20 withdrawn behavior?

21 A. Right.

22 Q. And again, I guess you're just noting  
23 his results?

24 A. I'm also noting that there's no T-score  
25 to tell me whether this is clinically significant

1 or not.

2 Q. Okay. Then on page nine at the very  
3 top, it says, just a screening instrument.

4 A. Uh-huh.

5 Q. What do you mean by that?

6 A. The PSC is a very brief screening  
7 instrument that's typically used in pediatric  
8 settings for physicians because it's a very brief  
9 quick screen where some of the other instruments  
10 are more difficult and time intensive for  
11 physicians to administer, but it doesn't give us  
12 very specific information.

13 Q. Okay. And we had discussed about  
14 screening versus diagnosing instruments earlier.

15 A. Uh-huh.

16 Q. It's still your -- and I'm not trying to  
17 trick you out of what you said before, obviously,  
18 but you had said earlier that screening  
19 instruments can be used as a factor in the  
20 diagnosis; is that correct?

21 A. Right. But in this case, and I have  
22 done some research on the PSC, typically, the PSC  
23 is something that is used by physicians because  
24 it's quick and easy. It correlates well with the  
25 CBCL but doesn't give us specific information

1 beyond behavioral cut-off score.

2 Q. So you have a -- I guess you have a  
3 discrepancy with his conclusion based on  
4 administering this test?

5 A. No, no. I just would in terms --

6 Q. You would have used a different test?

7 A. In terms of incremental validity, I  
8 might have, yes.

9 Q. All right. So let's go to the bottom of  
10 the page, and there's a question mark to the left  
11 of it, and then it says he has poor work habits  
12 and it is probably more a function of his overall  
13 levels of anxiety, and that's the portion you  
14 underlined; is that correct?

15 A. Right.

16 Q. And why did you have a question mark  
17 there?

18 A. Well, because I wasn't sure exactly  
19 where -- where the anxiety was documented. And  
20 poor work habits in school can be a -- that's one  
21 of the hypotheses. There could be a number of  
22 other hypotheses as well.

23 Q. When you say hypotheses, what other  
24 hypotheses do you think could affect poor grades?

25 A. Problems in terms of -- or deficits in

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1 IQ, deficits in achievement, visual difficulties,  
2 auditory difficulties, a number of other things.

3 Q. Then at the bottom of the page, you  
4 underline cut off range as well as one of the  
5 behavior rating scales completed by his father,  
6 and a double question mark I think to the right of  
7 that.

8 A. Uh-huh.

9 Q. What were you looking for there? Or  
10 what was it that you thought was missing?

11 A. I don't know what fell at the cut-off  
12 range means in terms of clinical significance. As  
13 a clinical psychologist, we discuss scores in  
14 terms of T-scores and whether or not they reach  
15 clinical significance or not.

16 Q. I think we're at the last page of your  
17 marginalia on this report, page 10. Donny clearly  
18 has extreme difficulty in taking -- talking about  
19 his mother and was only able to respond to  
20 questions when he was asked nonthreatening ones  
21 such as to describe what his mother looked like,  
22 and you underlined that.

23 A. Uh-huh.

24 Q. Why was that significant to you?

25 A. It just indicated what information he

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1 was able to glean from him in that interview.

2 Q. And when you conducted your interview,  
3 did you make similar findings?

4 A. No.

5 Q. Did you find that Donny Junior spoke  
6 about his mother?

7 A. Yes.

8 Q. What findings did you -- what  
9 observations or findings did you make during your  
10 evaluation of Donny Junior in relationship to --  
11 his relationship and his mother?

12 A. That he talked about his mother and his  
13 mother's illness to me.

14 Q. Do you remember what he talked about?

15 A. Yes.

16 Q. What did he say to you?

17 A. He talked about -- he said he can't  
18 remember a lot of when his mother was sick, but  
19 that he does remember that she used to pound the  
20 walls, and that he remembered the incident in  
21 which they were sleeping in the family bed and she  
22 soiled herself, and her -- that his father getting  
23 up and saying, that's it, I can't take it anymore,  
24 and then she went to the hospital after that. He  
25 remembers visiting her in the hospital. He

1 remembers people being at the house after -- you  
2 know, after the funeral.

3 Q. Okay.

4 A. He remembers things they used to do and  
5 things that --

6 Q. Do you remember what things he related  
7 to you or what --

8 A. He talked a lot about going shopping.

9 He said -- I can't remember if it was Wal-Mart or  
10 K-Mart, but he used to like to go there with her.

11 Q. Okay. Is there anything else that he  
12 described to you about his relationship with his  
13 mother that you remember?

14 A. That he used to sleep with his mother  
15 and father. That he enjoyed his time with his  
16 mother.

17 Q. Is there anything else?

18 A. He was sad his mother had died.

19 Q. Did he cry?

20 A. Yes, he did.

21 Q. In the next paragraph, you have an  
22 indentation around the whole paragraph.

23 A. Uh-huh.

24 Q. And then you underline the second  
25 sentence where -- I mean, the second line where it

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1 says it is the psychologist's recommendation that  
2 Donny not be placed in that situation.

3 A. Uh-huh.

4 Q. What were you driving at there or why  
5 was that interesting to you?

6 A. That that was his conclusion.

7 Q. Uh-huh. And did you make similar  
8 findings when you had your evaluation or did your  
9 evaluation -- was it in concurrence with this  
10 conclusion or not?

11 A. Which evaluation?

12 Q. Your evaluation of Donny Junior, do you  
13 have -- do you agree with that recommendation or  
14 not?

15 A. That wasn't one of the referral  
16 questions for this assessment.

17 Q. So as you sit here today and look at  
18 that recommendation, is that something you think  
19 is advisable or not?

20 A. To put a child through a deposition?

21 Q. Right.

22 A. It would be my preference not to put a  
23 child through a deposition.

24 Q. I think for this report that's all your  
25 marginalia. There is a portion there where -- I

1 think you described it, but there's a portion here  
2 on page 8 where you really can't see the rest of  
3 it so -- but other than that, I think we covered  
4 all of it.

5 A. That one I did define for you, no  
6 mention about --

7 Q. Oh, no, no -- oh, on the -- where are  
8 you looking?

9 A. On page 8.

10 Q. Yeah, I know. I was just referring --  
11 there seems to be, if you look at the right column  
12 of the page, a lot of marginalia that might have  
13 been cut off and we can't read it, but that's  
14 okay. I don't know if you still have a copy of  
15 the original.

16 A. I'm sure I do.

17 MR. KLOK: Is there any way we can get a  
18 copy that has a better photocopy if it exists?

19 MS. SCHWARZSCHILD: Absolutely.

20 MR. KLOK: Okay, thanks.

21 Q. Let's look at the exhibit -- I think  
22 it's the 1/27/2000 examination.

23 A. Uh-huh.

24 Q. Report. The check marks, do they mean  
25 anything in particular? On the first page you

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1 just have a check mark.

2 A. Just so I -- highlight teacher's name.

3 Q. Okay. Who you actually I guess send an  
4 evaluation to?

5 A. Yes.

6 Q. And then on page two under behavioral  
7 observations you put a box around his shy nature  
8 makes it extremely difficult for him to converse  
9 during an interview session. At the time you  
10 reviewed this evaluation you had not done your  
11 evaluation; is that correct?

12 A. The initial review, that's correct.

13 Q. Correct. So you were just going by  
14 these reports, correct?

15 A. That would be salient.

16 Q. Okay. And what -- I suppose, what were  
17 you thinking or why was that interesting to you  
18 that you circled that portion?

19 A. It noted that he wasn't able to get  
20 verbal information from the child.

21 Q. And we've already discussed your  
22 findings on that issue, so I think I don't need to  
23 ask that again.

24 The next note says -- if you can help me  
25 interpret that. Drawings, and I'm not exactly

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1 sure what you wrote, but what does it say?

2 A. The validity of drawings are in question  
3 and also one question I would have is this child  
4 has a low performance IQ and a delayed VMI, did  
5 that play at all into his ability to draw, so you  
6 would want to look at that.

7 Q. So it's a disagreement with the  
8 effectiveness of using drawings to interpret the  
9 -- to interpret Donny Junior?

10 A. No. What I said is that drawings, that  
11 they do not have reliability and validity  
12 coefficients that are as acceptable as other  
13 methods of assessment.

14 Q. Then underneath that, I'm not sure it's  
15 -- there's a 6/98 note. Is that a note on 6/98  
16 or -- I'm not sure why it says 6/98 there, do you?

17 A. 6/98 is when the last report was done.

18 Q. And what does it say next to it?

19 A. Gave up old home, et cetera, this child  
20 moved to a new environment.

21 Q. Then on -- let's go to page 3. I think  
22 I can actually read that. There is a -- there's a  
23 portion in that first paragraph which is circled  
24 that says he hesitated and paused approximately 20  
25 seconds and then you wrote a note, how is this

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1 temporal?

2 A. Uh-huh.

3 Q. And I can't -- variably a valid  
4 indicator of emotional --

5 A. Functioning.

6 Q. -- functioning, okay, thank you.

7 And I guess you're just taking issue  
8 with the pause of 20 seconds?

9 A. I don't know if -- what conclusion we're  
10 to draw from that.

11 Q. And then underneath that, I'm not sure  
12 what that says. Historical reports of poor?

13 A. Uh-huh.

14 Q. Okay, I can read that.

15 Then under overall impressions, again,  
16 excessive shy and question mark, and I think we  
17 have covered that already in your previous  
18 report. Is that still the same reason why you're  
19 circling it?

20 A. Yes.

21 Q. Okay. And then I think the next one  
22 says how much of this is tied to development  
23 factors underneath that circled portion.

24 A. Developmental factors.

25 Q. Uh-huh.

1           A. Uh-huh.

2           Q. Okay. And then you circled, obviously,  
3 where he says, Donny meets diagnostic criteria for  
4 an adjustment disorder, and then you have a circle  
5 around that with an arrow and the bottom says  
6 would need to not have shown these symptoms. Is  
7 that what it says?

8           A. Yes.

9           Q. I think those -- that's all the  
10 marginalia you have there.

11          A. With the exception of one on the top of  
12 the page that we didn't cover.

13          Q. Which one is that?

14          A. Could be tied to multiple factors in  
15 addition to loss of mother.

16          Q. That's because I can read that one.

17          A. Okay.

18          Q. Yes. And I thank you for doing that  
19 because I -- all right. So other than that, I  
20 think we covered most of them in there, or all of  
21 them.

22           MR. KLOK: Why don't we take a break  
23 right now, and I think we're going to able to wrap  
24 this up pretty soon.

25           (Recess taken.)

1 Q. Dr. Simonian, when you met with Donny  
2 Junior, how long did you meet with him for?

3 A. Five hours. About five hours  
4 approximately.

5 Q. And did you also personally interview  
6 Donny Senior?

7 A. Yes.

8 Q. For how long?

9 A. Approximately one hour of that.

10 Q. And you -- did you hand him an  
11 evaluation or a form or information to fill out  
12 for you?

13 A. Yes.

14 Q. What kind of information did you ask him  
15 to fill out?

16 A. The parent rating scale. I also asked  
17 him to sign two releases prior to starting the  
18 assessment.

19 Q. And was he present when you were  
20 evaluating Donny Junior in the room?

21 A. Not in the room.

22 Q. Where was he, do you know?

23 A. In the waiting room.

24 MR. KLOK: Okay. I have no further  
25 questions. I'd like to thank you for coming down

DR. SIMONIAN

7/19/00

1 here and thank counsel for being here promptly.

2 MS. SCHWARZSCHILD: We will read.

3 MR. KLOK: Unless you have any  
4 questions.

5 MS. SCHWARZSCHILD: No.

6 (Whereupon, the deposition was concluded  
7 at 11:57 a.m.)

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DR. SIMONIAN

7/19/00

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF CHARLESTON )

3

4 I, Robert P. Lloyd, Registered Merit Reporter  
5 and Notary Public for the State of South Carolina  
6 at Large, do hereby certify that the witness in  
7 the foregoing deposition was by me duly sworn to  
8 testify to the truth, the whole truth and nothing  
9 but the truth in the within-entitled cause; that  
10 said deposition was taken at the time and location  
11 therein stated; that the testimony of the witness  
12 and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed by computer-aided  
transcription; that the foregoing is a full,  
complete and true record of the testimony of the  
witness and of all objections made at the time of  
the examination; and that the witness was given an  
opportunity to read and correct said deposition  
and to subscribe the same.

13 Should the signature of the witness not be  
affixed to the deposition, the witness shall not  
14 have availed himself of the opportunity to sign or  
the signature has been waived.

15 I further certify that I am neither related  
16 to nor counsel for any party to the cause pending  
or interested in the events thereof.

17 Witness my hand, I have hereunto affixed my  
18 official seal this 26th day of July, 2000, at  
Charleston, Charleston County, South Carolina.

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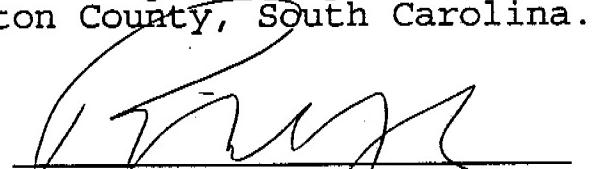
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Robert P. Lloyd RMR  
My Commission expires  
March 6, 2005

DR. SIMONIAN

7/19/00

1                   DEPONENT CORRECTION SHEET

2         I, the undersigned, SUSAN J. SIMONIAN, Ph.D.,  
3         do hereby certify that I have read the foregoing  
4         deposition and wish to make the following  
5         clarifications and/or corrections, if any.

6

7         PAGE    LINE    CHANGE                   REASON

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SUSAN J. SIMONIAN, Ph.D.                   Date

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